

EXHIBIT 33

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 THE AUTHORS GUILD, et al.,
5 Plaintiffs,

6 Master File No.

7 -vs-

05 CV 8136-DC

8
9 GOOGLE, INC.,
10 Defendant.
11 _____/

12
13
14
15 The Videotaped Deposition of PAUL N. COURANT,
16 Ph.D., Taken at 503 Thompson Street,
17 5021 Fleming Administration Building,
18 Ann Arbor, Michigan,
19 Commencing at 2:00 p.m.,
20 Monday, April 23, 2012,
21 Before Jennifer L. Ward, CSR-3717.
22
23
24
25

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MICHAEL J. BONI, ESQ.</p> <p>4 Boni & Zack, LLC</p> <p>5 15 St. Asaphs Road</p> <p>6 Bala Cynwyd, Pennsylvania 19004</p> <p>7 (610) 822-0200</p> <p>8 mboni@bonizack.com</p> <p>9 Appearing on behalf of Plaintiffs, via</p> <p>10 Speakerphone.</p> <p>11</p> <p>12 DARALYN J. DURIE, ESQ.</p> <p>13 Durie Tangri</p> <p>14 217 Leidesdorff Street</p> <p>15 San Francisco, California 94111</p> <p>16 (415) 362-6666</p> <p>17 ddurie@durietangri.com</p> <p>18 Appearing on behalf of Defendant Google.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (Appearances continued on Page 3.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 ALSO PRESENT:</p> <p>4 Steve Alfonsi, Videographer</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 JOSEPH PETERSEN, ESQ. and</p> <p>4 ALLISON SCOTT ROACH, ESQ.</p> <p>5 Kilpatrick Townsend & Stockton, LLP</p> <p>6 The Grace Building</p> <p>7 1114 Avenue of the Americas</p> <p>8 New York, New York, 10036-7703</p> <p>9 (212) 775-8715</p> <p>10 jpetersen@ktslaw.com</p> <p>11 ascott@kilpatricktownsend.com</p> <p>12 Appearing on behalf of the University of</p> <p>13 Michigan and the Deponent.</p> <p>14</p> <p>15 JACK BERNARD, ESQ.</p> <p>16 Associate General Counsel</p> <p>17 The University of Michigan</p> <p>18 Office of the Vice President and General Counsel</p> <p>19 5010 Fleming Administration Building</p> <p>20 503 Thompson Street</p> <p>21 Ann Arbor, Michigan 48109</p> <p>22 (734) 764-0304</p> <p>23 bernar@umich.edu</p> <p>24 Appearing on behalf of the University of</p> <p>25 Michigan.</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXAMINATIONS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 PAUL N. COURANT, Ph.D.</p> <p>5</p> <p>6 EXAMINATION BY MR. BONI 7</p> <p>7 EXAMINATION BY MS. DURIE 92</p> <p>8 REEXAMINATION BY MR. BONI 116</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 INDEX TO EXHIBITS</p> <p>14</p> <p>15 EXHIBIT PAGE</p> <p>16</p> <p>17 EXHIBIT 1</p> <p>18 Complaint 6</p> <p>19</p> <p>20 EXHIBIT 2</p> <p>21 Answer and Defenses 6</p> <p>22</p> <p>23 EXHIBIT 3</p> <p>24 Cooperative Agreement 101</p> <p>25</p>

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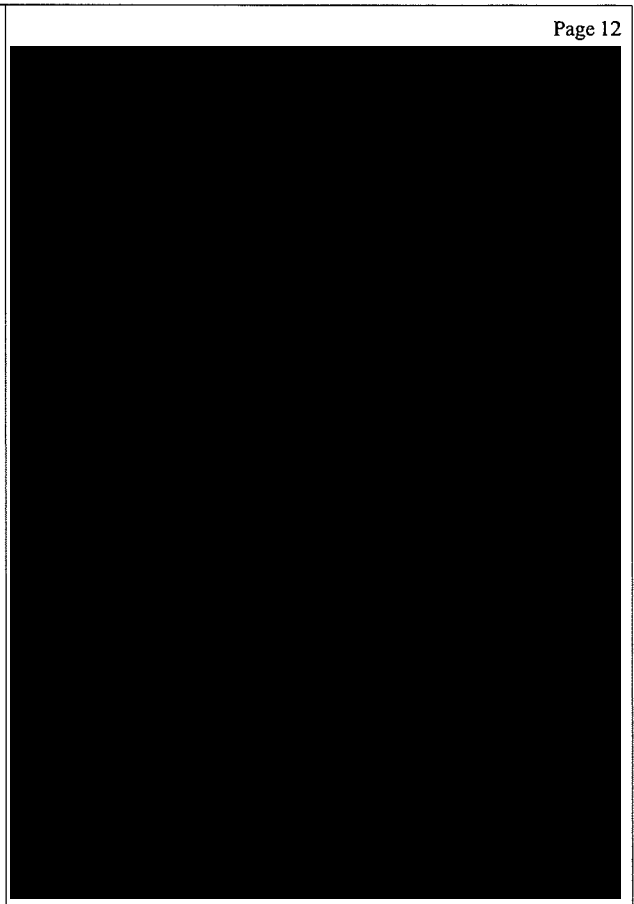
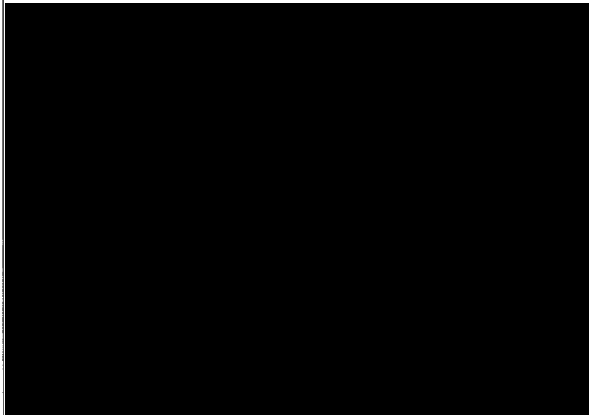
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<p style="text-align: right;">Page 6</p> <p>1 Ann Arbor, Michigan 2 Monday, April 23, 2012 3 About 1:51 p.m. 4 DEPOSITION EXHIBITS 1 AND 2 5 (Identified in Index to Exhibits) 6 WERE MARKED BY THE REPORTER 7 FOR IDENTIFICATION 8 THE VIDEOGRAPHER: On the record. 9 This is the videotaped deposition of Paul Courant being 10 taken in Ann Arbor, Michigan. Today is April 23rd, 11 2012. The time is 1:51 p.m. 12 Will the attorneys please introduce 13 themselves and the court reporter please swear in the 14 witness. 15 MS. DURIE: This is Daralyn Durie 16 representing Google. 17 MR. PETERSEN: This is Joe Petersen 18 representing the University of Michigan and the 19 witness, Dr. Paul Courant. 20 MR. BONI: And this is Michael Boni 21 representing the Plaintiffs in the matter Authors Guild 22 et al v. Google. 23 PAUL N. COURANT, Ph.D., 24 having first been duly sworn, was examined and 25 testified on his oath as follows:</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Dr. Courant, you understand that you're here 2 pursuant to a subpoena that Plaintiffs in the Google 3 matter served on the University of Michigan? 4 A. I'm actually here because my attorney tells 5 me to be here, but that sounds plausible. 6 MR. PETERSEN: And as to -- 7 Joe Petersen speaking, Mike, just I'll add as well the 8 subpoena was in fact to the University of Michigan. 9 MR. BONI: Right, that's what I said 10 in the question, yeah. 11 BY MR. BONI: 12 Q. And you are here, Dr. Courant, representing 13 the University of Michigan as a result of that 14 subpoena? 15 A. That's correct. 16 Q. Okay. Dr. Courant, what are your -- what 17 are your duties at the University of Michigan? 18 A. I'm a professor of economics and a professor 19 of public policy and a professor of information, and in 20 those contexts I teach, advise dissertations, go to 21 department meetings, engage in the life of the faculty, 22 and I'm also Dean of Libraries and the university 23 librarian, and in that context I am responsible for the 24 activities of the largest library or set of libraries 25 on campus.</p>
<p style="text-align: right;">Page 7</p> <p>1 EXAMINATION BY MR. BONI: 2 Q. Good afternoon, Doctor. Is it okay to refer 3 to you -- 4 A. You just cut out. 5 Q. Is it okay to refer to you -- 6 MR. PETERSEN: Mike, you're cutting 7 out. I'm not sure what's causing that, but we should 8 fix that before proceeding. 9 MR. BONI: Oh, great. 10 MS. DURIE: Why don't you -- I think 11 you may need to just pick up your handset. 12 MR. BONI: Yeah. Is this better? 13 MS. DURIE: Yes, it is. 14 MR. BERNARD: Yes. 15 MR. BONI: All right. I'll do my 16 best when it comes time to dealing with the Answer, but 17 okay. 18 BY MR. BONI: 19 Q. Dr. Courant, is it okay that I refer to you 20 as Dr. Courant? 21 A. Sure. 22 Q. Okay. Could you please spell your name for 23 the record? 24 A. P-a-u-l, space, N-o-a-h, space, 25 C-o-u-r-a-n-t.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. It will be in your role as Dean of Libraries 2 that we -- that I'll be asking you questions today. 3 Can you describe very briefly what your role is as 4 Dean of Libraries? 5 A. I am the chief -- I mean this is not a 6 formal title, but I am responsible for the activities 7 of, again, most of the university libraries, so -- we 8 have several hundred employees and many millions of 9 books, and lots of other materials as well, and the 10 library functions to bring academic works to the campus 11 and also more broadly to the community of scholars and 12 interested parties nationwide and worldwide. It does 13 what libraries -- I mean I could go on at great length 14 what libraries do if that's what you want me to do. 15 Q. No, that's fine. I just really needed a 16 brief -- just a brief explanation. 17 A. And I am the one who is responsible to the 18 president and then to the regents for the activities of 19 the library. 20 Q. And how long have you held the role of 21 Dean of Libraries at University of Michigan? 22 A. A little over five years. 23 Q. Okay. Prior to your -- prior to your title 24 of Dean of Libraries, what position did you hold? 25 A. Immediately prior I was professor of</p>

<p style="text-align: right;">Page 10</p> <p>1 economics, professor of public policy, and professor of 2 information. Some years -- sometime before that I was 3 vice president for academic -- executive vice president 4 for academic affairs and provost, and I can go through 5 another long list if you wish. 6 Q. Not necessary. Did you have any role prior 7 to the time you were Dean of Libraries with respect to 8 University of Michigan's library system? 9 A. Well, yes, of course. As provost I was -- 10 the library reported to me. The provost is the chief 11 academic officer of the university, and the library is 12 a big academic unit. As a faculty member I used the 13 library frequently. 14 Q. In your capacity as provost did you have any 15 involvement in -- strike that. Let me ask this 16 question. Are you familiar with an initiative known as 17 the Google Library Project? 18 MR. PETERSEN: Objection to form. 19 THE WITNESS: I am familiar with 20 that project, yes. 21 BY MR. BONI: 22 Q. When you were provost did you have any role 23 with respect to the Google Library Project? 24 A. Yes, I did. 25 Q. Could you describe that role?</p>	<p style="text-align: right;">Page 12</p> 
<p style="text-align: right;">Page 11</p> <p>1 A. I was the -- I was the reporting line for 2 the librarian, so as that project emerged he kept me 3 generally informed about what was going on, and also 4 sought my approval for various major aspects. I didn't 5 get into the details. 6 Q. Who did get into -- who at University of 7 Michigan was more responsible than you with respect to 8 the -- getting into the details of the Google Library 9 Project? 10 MR. PETERSEN: Objection to form. 11 THE WITNESS: Yeah, it's -- you 12 know, it -- in terms of getting into details, 13 John Wilkin was the lead person in the library.</p> 	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. And you agree, Dr. Courant, that the 2 University of Michigan entered into a cooperative 3 agreement with Google in connection with the Google 4 Library Project? 5 MR. PETERSEN: Objection to form and 6 objection to the extent it calls for a legal 7 conclusion. 8 THE WITNESS: There was a 9 cooperative agreement. There's a document of that 10 title executed between the University of Michigan and 11 Google. 12 BY MR. BONI: 13 Q. As a result of the -- strike that. At any 14 time did the University of Michigan receive digital 15 copies of the books that the University of Michigan 16 Library permitted Google to scan? 17 MR. PETERSEN: Objection to form and 18 objection to the extent it calls for a legal conclusion 19 as to what constitutes a copy. 20 MR. BONI: Okay. Where we are, Joe, 21 there's no need -- you can just say "objection to form" 22 or this could be a very long deposition. So if you say 23 "objection to form," it will count. 24 MR. PETERSEN: Thank you. Thanks 25 for the advice, Michael. I am defending the</p>

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1 deposition.

2 MR. BONI: I'm not finished. I'm
3 sorry, I'm not finished. And also, I'm happy to
4 stipulate that there's no need to join one another's
5 objections. That will -- that will be fine. I'm just
6 trying to -- I'm just trying to move it along, that's
7 all.

8 MR. PETERSEN: Michael, understood.
9 I make the objections that I see fit to make. I am
10 happy if Daralyn makes an objection, if you agree that
11 I join automatically to that I will not be redundant
12 then, and I imagine Daralyn feels likewise.

13 MS. DURIE: I do indeed. Thanks.
14 Thanks for that, Mike.

15 MR. BONI: Great. Thank you.

16 BY MR. BONI:

17 Q. So I'm sorry, I didn't hear whether you
18 answered the question or not.

19 A. I didn't, and I've forgotten what it was,
20 so --

21 Q. I'll just -- I'll just ask it -- I'll just
22 ask it again. Has the University of Michigan ever
23 received digital copies of books that Michigan
24 permitted Google to scan from the University of
25 Michigan's libraries?

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1 MR. PETERSEN: And I make my same
2 objection.

3 THE WITNESS: I -- let me just
4 restate it slightly.

5 BY MR. BONI:

6 Q. Sure.

7 A. Google did scan works from the University of
8 Michigan libraries, and Google -- and we did indeed
9 receive copies of those scans. Well, copies made from
10 those scans, digital copies, not legal copies. I don't
11 know what those are.

12 Q. Okay. So you did -- Michigan does have
13 digital copies that it received from Google, correct?

14 MR. PETERSEN: Objection to form.

15 THE WITNESS: That is correct.

16 BY MR. BONI:

17 Q. And --

18 A. Unless there's some term of art about
19 "received from" that I'm missing, which is always
20 possible in these kinds of proceedings.

21 Q. Well, if you have anything to clarify, that
22 would be welcome.

23 MR. PETERSEN: Well, Mike, I think
24 the issue -- part of the issue with your question, you
25 said copies. It's unclear whether or not you're

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1 talking about works in total or an individual work.

2 MR. BONI: Oh, good. Well, thank
3 you. Thank you. Okay.

4 BY MR. BONI:

5 Q. So let me clarify then, Dr. Courant. Has
6 the University of Michigan received digital copies of
7 individual books that Michigan permitted Google to
8 digitize --

9 MR. PETERSEN: Objection.

10 BY MR. BONI:

11 Q. -- from Michigan's collection?

12 MR. PETERSEN: Objection to form.

13 THE WITNESS: So I think -- I mean
14 there are -- yes, except I'm nervous about the word
15 copies as distinct from a copy of a book and a copy of
16 another book, etcetera.

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Page 20

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Page 21

2 Q. Tell me what the Hathi Trust is,
3 Dr. Courant.
4 MR. PETERSEN: Objection to form.
5 BY MR. BONI:
6 Q. As you just used that term.
7 A. It is an entity that is resident add and run
8 by the University of Michigan that is a -- stores and
9 makes available under certain circumstances works
10 deposited by academic libraries, mostly from the
11 United States, although we have some non-U.S. members
12 as well.
13 Q. Does the University of Michigan have a role
14 with respect to the Hathi Trust?
15 A. Yeah, I think -- I thought I just said that.
16 The University of Michigan is the -- is the entity that
17 operates the Hathi Trust.
18 Q. I see. And is there any one person more
19 than another at the University of Michigan who is in
20 charge of the Hathi Trust?
21 MR. PETERSEN: Objection to form.
22 THE WITNESS: John Wilkin is the
23 executive director of the Hathi Trust.
24 BY MR. BONI:
25 Q. Did the University of Michigan form

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 Hathi Trust in conjunction with any other university?</p> <p>2 A. The Hathi Trust as such came out of a</p> <p>3 conversation that we had with Indiana University.</p> <p>4 Q. What is Indiana University's role with</p> <p>5 respect to Hathi Trust?</p> <p>6 A. It has contributed substantial financial and</p> <p>7 technical support, and also operates the mirror site</p> <p>8 for the works in the Hathi Trust.</p> <p>9 Q. Tell me what you mean by the mirror site.</p> <p>10 A. To a first approximation, as I understand</p> <p>11 it, and we're again skating away from what I know well,</p> <p>12 there is a copy of the deposits in the Hathi Trust in</p> <p>13 Ann Arbor, and an identical copy in Bloomington.</p> <p>14 Actually, it's not in Bloomington. I believe -- I have</p> <p>15 to be careful here. It might be Bloomington, it might</p> <p>16 be Indianapolis. I'd have to check.</p> <p>17 Q. Are there any other such mirror copies to</p> <p>18 your knowledge?</p> <p>19 A. No, not to my knowledge.</p> <p>20 Q. Are you aware of whether any university</p> <p>21 other than the University of Michigan and the</p> <p>22 University of Indiana -- or Indiana University who has</p> <p>23 a copy of the files that the Hathi Trust has?</p> <p>24 MR. PETERSEN: Objection to form,</p> <p>25 vague. I'm not clear what files you're referring to.</p>	<p style="text-align: right;">Page 24</p> <p>1 University of Michigan Library permitted Google to scan</p> <p>2 held outside of the aegis of the Hathi Trust?</p> <p>3 MR. PETERSEN: Objection to form.</p> <p>4 If the witness knows what you're referring to, he can</p> <p>5 answer.</p> <p>6 THE WITNESS: I -- if you're</p> <p>7 referring to the tape backups --</p> <p>8 MR. PETERSEN: Only if you know.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. PETERSEN: Mike, why don't you</p> <p>11 rephrase that question?</p> <p>12 THE WITNESS: Otherwise I don't</p> <p>13 know.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Yeah, I'm sorry. Let me rephrase it. I</p> <p>16 couldn't answer it myself. Are -- well, let's do this.</p> <p>17 Dr. Courant, when I referred to the phrase digital</p> <p>18 copies, could I ask you to agree whether if I use that</p> <p>19 phrase I'm referring to the files that Google sent to</p> <p>20 the University of Michigan as part of the Google</p> <p>21 Library Project?</p> <p>22 MS. DURIE: Objection, lacks</p> <p>23 foundation.</p> <p>24 MR. PETERSEN: I think that's gonna</p> <p>25 be cumbersome, Mike. I think you just need to take</p>
<p style="text-align: right;">Page 23</p> <p>1 BY MR. BONI:</p> <p>2 Q. I mean the digital copies of books.</p> <p>3 MR. PETERSEN: Same objection.</p> <p>4 THE WITNESS: I don't know how</p> <p>5 to -- I would be surprised if anybody had the complete</p> <p>6 set. I -- that's all I know.</p> <p>7 BY MR. BONI:</p> <p>8 Q. Okay. You are aware, are you not,</p> <p>9 Dr. Courant, that other universities have digital</p> <p>10 copies of the books that Google scanned at those</p> <p>11 libraries as well, correct?</p> <p>12 MR. PETERSEN: Objection to form.</p> <p>13 THE WITNESS: So two points. One,</p> <p>14 of course a great deal of what's in the Hathi Trust is</p> <p>15 in the public domain, and there are many copies in</p> <p>16 many places of those works widely used. And second,</p> <p>17 there are libraries that participated in scanning</p> <p>18 projects with Google that have not deposited all of the</p> <p>19 works they received in Hathi Trust, and presumably some</p> <p>20 of those hold their own copies. I wouldn't know what</p> <p>21 they do.</p> <p>22 BY MR. BONI:</p> <p>23 Q. At the University of Michigan are there</p> <p>24 any -- are there any file copies -- I'm sorry. Are</p> <p>25 there any digital copies of the books that the</p>	<p style="text-align: right;">Page 25</p> <p>1 each question at a time, and I think you should note</p> <p>2 my continuing objection to the use of copies to the</p> <p>3 extent it calls for any legal conclusions from this</p> <p>4 witness.</p> <p>5 THE WITNESS: But I'm supposed to</p> <p>6 try to answer it anyhow?</p> <p>7 BY MR. BONI:</p> <p>8 Q. Yeah.</p> <p>9 A. Okay. So -- so again, my issue with copies</p> <p>10 is counsel tells me about the legal issues.</p> <p>11 MR. PETERSEN: I don't want you --</p> <p>12 yeah.</p> <p>13 THE WITNESS: But I -- you know, the</p> <p>14 way in which computers and files work, the physical</p> <p>15 integrity of things is fluid, so there's a copy and</p> <p>16 then it gets moved from one place to another, and so I</p> <p>17 don't -- the actual molecules of things -- actually</p> <p>18 they aren't even molecules, the actual electrons, you</p> <p>19 seem to be asking if we -- about the specific</p> <p>20 configurations of electrons that Google made --</p> <p>21 returned or allowed -- made copies of or allowed us to</p> <p>22 make -- to acquire in the first place as a result of</p> <p>23 copying here, and I don't know enough about how these</p> <p>24 things work to be able to say anything about what</p> <p>25 happens to those particular bundles of electrons.</p>

7 (Pages 22 - 25)

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<p style="text-align: right;">Page 26</p> <p>1 BY MR. BONI:</p> <p>2 Q. Right. I got it. I think you're giving --</p> <p>3 you give me too much credit. I guess I was asking</p> <p>4 in response to something you testified to earlier</p> <p>5 that -- when I asked where these copies were -- why</p> <p>6 don't I -- why don't I say digital files if the word I</p> <p>7 used --</p> <p>8 A. Yes, that's better.</p> <p>9 Q. -- is problematic. Is that a better phrase</p> <p>10 to describe what Google has given back to the</p> <p>11 University of Michigan?</p> <p>12 MS. DURIE: Objection, lacks</p> <p>13 foundation.</p> <p>14 THE WITNESS: So digital -- digital</p> <p>15 files that contain -- contain in some form these works?</p> <p>16 BY MR. BONI:</p> <p>17 Q. The books, right.</p> <p>18 A. That's -- that's okay with me. I know -- I</p> <p>19 think I know what we're talking about now.</p> <p>20 Q. So we talked earlier about the -- where the</p> <p>21 digital files were kept, and at one point you said that</p> <p>22 at some point they were kept under the aegis of the</p> <p>23 Hathi Trust, and my question was whether any such files</p> <p>24 today are kept outside of the aegis of the Hathi Trust?</p> <p>25 A. Anywhere in the world by somebody?</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PETERSEN: Objection to form.</p> <p>2 THE WITNESS: There are of course</p> <p>3 many public domain works held in many places in digital</p> <p>4 form.</p> <p>5 BY MR. BONI:</p> <p>6 Q. Are you aware of whether among the books</p> <p>7 that Google scanned are books that are not in the</p> <p>8 public domain, but rather are in copyright?</p> <p>9 MR. PETERSEN: Objection to form.</p> <p>10 Objection, calls for a legal conclusion.</p> <p>11 THE WITNESS: There are works that</p> <p>12 are -- yes, there are works that are in copyright that</p> <p>13 were scanned as part of the project.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Do you know whether the University of</p> <p>16 Michigan has tapes of digitized copies of in copyright</p> <p>17 books from the University of Michigan Library other</p> <p>18 than the tape backups that you just testified about?</p> <p>19 A. I am not aware of any such.</p> <p>20 Q. Okay. Dr. Courant, are you aware of an</p> <p>21 initiative called the Orphan Works Project?</p> <p>22 A. I am.</p> <p>23 Q. What is the Orphan Works Project?</p> <p>24 A. The idea behind the Orphan Works Project was</p> <p>25 to identify works that were determined to be in</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. No, at the University of Michigan.</p> <p>2 A. Here I am -- there exist tape backups of the</p> <p>3 files, and whether those tape backups are being held</p> <p>4 under the aegis of the Hathi Trust or the University of</p> <p>5 Michigan Library, not the Hathi Trust, is an</p> <p>6 organizational matter that I simply don't know.</p> <p>7 Q. What form do these tape backups take? Do</p> <p>8 you know, Dr. Courant?</p> <p>9 MR. PETERSEN: Objection to form,</p> <p>10 vague.</p> <p>11 THE WITNESS: And you're not --</p> <p>12 again, we're talking about technical details. They're,</p> <p>13 you know, tapes. Magnetic tapes I assume.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Okay. These are physical tapes that you can</p> <p>16 hold, correct?</p> <p>17 MR. PETERSEN: Objection to form.</p> <p>18 THE WITNESS: Again, I don't know</p> <p>19 their size, but they would -- they are -- they're --</p> <p>20 yes is my guess is the right answer to that question.</p> <p>21 BY MR. BONI:</p> <p>22 Q. Okay. Other than the tape backups, are you</p> <p>23 aware of any other tapes that hold in digital form the</p> <p>24 books that Google digitized from the University of</p> <p>25 Michigan's libraries collection?</p>	<p style="text-align: right;">Page 29</p> <p>1 copyright through a set of investigations where the</p> <p>2 rights holder could not be found, and to make available</p> <p>3 to authorized, authenticated users of the University of</p> <p>4 Michigan libraries the ability to read those works</p> <p>5 online, limited to the number of copies of the original</p> <p>6 physical works that we had originally purchased. So</p> <p>7 all of these works were works where the University of</p> <p>8 Michigan acquired a physical copy at some point.</p> <p>9 The works were then scanned by</p> <p>10 Google or could also have been scanned by the</p> <p>11 university or -- and then the works -- we would explore</p> <p>12 to establish that we couldn't find a rights holder, and</p> <p>13 once that was established, well established, we would</p> <p>14 make the works available on this limited time basis to</p> <p>15 members of our community.</p> <p>16 Q. Are you aware of any person who has primary</p> <p>17 responsibility for the oversight of the Orphan Works</p> <p>18 Project?</p> <p>19 MR. PETERSEN: Objection to form.</p> <p>20 THE WITNESS: Again, the project has</p> <p>21 been largely led by John Wilkin.</p> <p>22 BY MR. BONI:</p> <p>23 Q. Was it John Wilkin's idea?</p> <p>24 MR. PETERSEN: Objection to form.</p> <p>25 THE WITNESS: It came out of</p>

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1 discussions among a number of leaders both in the
2 library and the university.

3 BY MR. BONI:

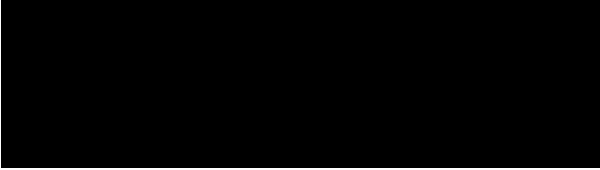
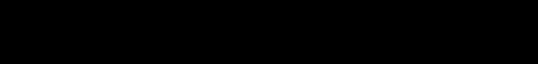
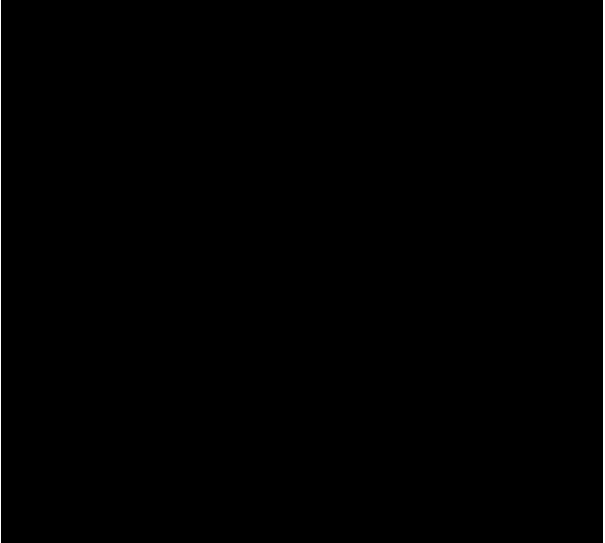
4 Q. And who are those leaders?

5 A. John Wilkin, myself, members of the
6 General Counsel's office, and then consultation with
7 the provost and the president, and others -- surely
8 others on the library staff. We discussed it quite
9 widely before we proceeded.

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Page 31

Page 33

<p style="text-align: right;">Page 34</p>  <p>6 MR. PETERSEN: Objection to form. I 7 think you need to define what the cooperative agreement 8 is, which one you're talking about. 9 BY MR. BONI: 10 Q. The operative cooperative agreement between 11 the University of Michigan and Google regarding the 12 Google Library Project. 13 MR. PETERSEN: Well, your idea of 14 what's operative might be different than the witness', 15 Mike, so I think if you're referring to an agreement, I 16 think it's appropriate to identify that agreement and 17 perhaps put it in front of the witness. 18 BY MR. BONI: 19 Q. Dr. Courant, are you aware of several 20 cooperative agreements that are between the University 21 of Michigan and Google? 22 A. I'm specifically aware of two. There may be 23 more.</p> 	<p style="text-align: right;">Page 36</p> <p>1 the digital files it received from Google? 2 MR. PETERSEN: Objection to form. 3 THE WITNESS: And that's a very 4 different question, right? 5 BY MR. BONI: 6 Q. Yes. 7 A. Okay. So could you -- would you state it 8 again? 9 Q. Sure. Has the University of Michigan 10 displayed in full any in copyright books from the digit 11 files it received from Google? 12 MR. PETERSEN: You're talking about 13 regardless of licensing status? It's a very broad 14 question, Mike. It's essentially a meaningless 15 question, so I'll note my objection. 16 MR. BONI: Okay. 17 THE WITNESS: The answer -- so 18 there's a subtlety around the question, the use of the 19 word display. So there are certainly some in copyright 20 works that were produced in connection with the Google 21 project that have been and indeed in a moment, I want 22 to be very careful about this, are available to the 23 general public. The ones that are, in every case 24 that we know of have been specifically authorized to be 25 so by the rights holder. This happens quite</p>
<p style="text-align: right;">Page 35</p>  <p>17 A. Not to my knowledge, no. 18 Q. Has the university -- strike that. Has 19 Hathi Trust displayed any in copyright books in full in 20 connection with the Orphan Works Project? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: No. 23 BY MR. BONI: 24 Q. Do you know whether the University of 25 Michigan has displayed in full in copyright books from</p>	<p style="text-align: right;">Page 37</p> <p>1 frequently. So that -- so that answer is yes in that 2 limited way. 3 BY MR. BONI: 4 Q. So let's -- has the University of Michigan 5 displayed any in copyright book from the digital files 6 it received from Google as part of the Google Library 7 Project that was not authorized by the rights holder? 8 A. To my knowledge there have been a handful of 9 such cases. 10 Q. Under what circumstances have those displays 11 been made? 12 A. The Copyright Review Management System, 13 which we use to ascertain the copyright status of works 14 published after 1922 and before some important date in 15 the late '60s that I can't remember, maybe it's the 16 early '60s, has misidentified a -- as I said, a handful 17 of cases that were then available for a time. 18 Q. All right. Misidentified a handful of cases 19 that what? 20 A. That were then available on the -- from the 21 website for a time. 22 Q. And to whom were they made available? 23 MR. PETERSEN: Objection. 24 BY MR. BONI: 25 Q. Not the individual names obviously, but</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 generally to whom were they made available?</p> <p>2 MR. PETERSEN: Objection to form.</p> <p>3 Objection, mischaracterizes Dr. Courant's testimony.</p> <p>4 THE WITNESS: They could have been</p> <p>5 found by somebody with an Internet connection in the</p> <p>6 United States.</p> <p>7 BY MR. BONI:</p> <p>8 Q. And when you say a handful, how many are</p> <p>9 you -- how many books are you referring to?</p> <p>10 A. I would be really surprised if it got very</p> <p>11 far into the double digits and not surprised if it</p> <p>12 didn't get into the double digits at all.</p> <p>13 Q. So somewhere between 10 and 99?</p> <p>14 MR. PETERSEN: Objection to form,</p> <p>15 mischaracterizes the testimony.</p> <p>16 THE WITNESS: I would be very, very</p> <p>17 surprised if it were anywhere near 99.</p> <p>18 BY MR. BONI:</p> <p>19 Q. You think it was closer to 10?</p> <p>20 A. Yes.</p> <p>21 Q. And for how long were those books made</p> <p>22 available as a result of the misidentification of those</p> <p>23 books' copyright status?</p> <p>24 MR. PETERSEN: Objection to form.</p> <p>25 THE WITNESS: One would have to look</p>	<p style="text-align: right;">Page 40</p> <p>1 cases.</p> <p>2 BY MR. BONI:</p> <p>3 Q. You don't have actual knowledge of that</p> <p>4 occurring anywhere outside of the University of</p> <p>5 Michigan, correct?</p> <p>6 MR. PETERSEN: Objection to form.</p> <p>7 THE WITNESS: I have -- I have no</p> <p>8 specific knowledge of it happening elsewhere.</p> <p>9 BY MR. BONI:</p> <p>10 Q. Okay. What are Hathi Trust -- Hathi Trust's</p> <p>11 plans going forward with respect to the Orphan Works</p> <p>12 Project?</p> <p>13 A. The University of Michigan has plans to</p> <p>14 continue to work to identify orphan works, and</p> <p>15 that's -- in fact, we are continuing to work to</p> <p>16 identify orphan works.</p> <p>17 Q. Anything else? Is it limited to the</p> <p>18 identification of orphan works?</p> <p>19 MR. PETERSEN: Objection to form.</p> <p>20 THE WITNESS: That work is certainly</p> <p>21 work that we are committed to doing. We said at the</p> <p>22 time that we suspended the movement towards actually</p> <p>23 allowing members of our authorized and authenticated</p> <p>24 campus community to read these works one at a time in</p> <p>25 digital form, we said that we intended to learn and</p>
<p style="text-align: right;">Page 39</p> <p>1 at the record case by case, which I certainly haven't</p> <p>2 done.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Who would be the person in the best position</p> <p>5 to answer that question?</p> <p>6 A. Again, John Wilkin.</p> <p>7 Q. Okay. Dr. Courant, are you aware of any</p> <p>8 other university that displayed in copyright books to</p> <p>9 anyone without the authorization of the rights holder?</p> <p>10 MR. PETERSEN: Objection. Objection</p> <p>11 to form.</p> <p>12 THE WITNESS: So I would not -- I</p> <p>13 don't know -- when you say other you're presumably</p> <p>14 including the University of Michigan, and I'm not sure</p> <p>15 that these instances I've described rise to the level</p> <p>16 of display, and I don't specifically know of other</p> <p>17 cases.</p> <p>18 BY MR. BONI:</p> <p>19 Q. Well, I'm referring to any instances outside</p> <p>20 of the University of Michigan.</p> <p>21 MR. PETERSEN: Objection to form,</p> <p>22 asked and answered.</p> <p>23 THE WITNESS: Right. And so if</p> <p>24 you're asking -- I could speculate that this plausibly</p> <p>25 has happened, but I do not know of any particular</p>	<p style="text-align: right;">Page 41</p> <p>1 study and reassess our procedures and practices, and</p> <p>2 that's what we're currently engaged in.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Is it the intention of the Orphan Works</p> <p>5 Project to present for reading the full text of in</p> <p>6 copyright books without the authorization of the rights</p> <p>7 holder?</p> <p>8 MR. PETERSEN: Objection to form.</p> <p>9 Objection, asked and answered.</p> <p>10 THE WITNESS: It's a -- it's -- is</p> <p>11 it the intention of the project to do that? It</p> <p>12 certainly was in its -- well, I don't -- without the</p> <p>13 authority of the right holder, given that we already</p> <p>14 bought a copy and we're just substituting for it, I can</p> <p>15 dance around, but that was the original intention as I</p> <p>16 described it, that we would make individual copies</p> <p>17 available to members of the community where the library</p> <p>18 had already purchased a copy of the book, and the</p> <p>19 current status of the project is that we are -- we are</p> <p>20 considering what comes next.</p> <p>21 BY MR. BONI:</p> <p>22 Q. Okay. Dr. Courant, could you describe for</p> <p>23 me the -- all of the uses which you are aware of that</p> <p>24 the University of Michigan has made with the digital</p> <p>25 files it received from Google as part of the Google</p>

<p style="text-align: right;">Page 42</p> <p>1 Library Project?</p> <p>2 MR. PETERSEN: Objection to form.</p> <p>3 Objection, calls for a narrative. Can you ask a more</p> <p>4 focused question?</p> <p>5 MR. BONI: Yeah, I just want an</p> <p>6 answer as to all of the uses. I don't think it calls</p> <p>7 for a narrative at all. It calls for a list. It's</p> <p>8 okay.</p> <p>9 MR. PETERSEN: Same objection.</p> <p>10 THE WITNESS: So our uses of digital</p> <p>11 files?</p> <p>12 BY MR. BONI:</p> <p>13 Q. Yes.</p> <p>14 A. They're available for search, the works</p> <p>15 where -- that are in the public domain or where the</p> <p>16 rights holder have authorized us to do so are available</p> <p>17 to be read, and in some cases downloaded. The works</p> <p>18 that we believe -- that we do not know to be in the</p> <p>19 public domain or authorized by the rights holder are</p> <p>20 only available for search.</p> <p>21 And the works have also been</p> <p>22 used to be -- by people with certified print</p> <p>23 disabilities under -- under the university's relevant</p> <p>24 office for such certification. I'm trying to think</p> <p>25 what else. We have not yet -- yeah, I think I'll stop</p>	<p style="text-align: right;">Page 44</p> <p>1 distinct from to read? Yes?</p> <p>2 Q. Yeah. Fair distinction. Let's take both.</p> <p>3 A. Big distinction.</p> <p>4 Q. To search the text.</p> <p>5 A. To search the text for phrases or names or</p> <p>6 something like that, essentially the entire corpus</p> <p>7 of works held in the Hathi Trust, including the</p> <p>8 works contributed to the Hathi Trust by the University</p> <p>9 of Michigan, are available to search by essentially</p> <p>10 everyone in the United States with an Internet</p> <p>11 connection.</p> <p>12 Q. And then the same question with respect to</p> <p>13 availability to read the text of those works; that is</p> <p>14 to say, works that are in copyright and were not</p> <p>15 digitized with the authorization of the rights holders?</p> <p>16 MR. PETERSEN: Mike, that was</p> <p>17 complicated. Can you put that question together? It</p> <p>18 was a complicated question to begin with, and I --</p> <p>19 MR. BONI: Yeah, sure.</p> <p>20 BY MR. BONI:</p> <p>21 Q. Who -- to whom does the University of</p> <p>22 Michigan make available for reading purposes the</p> <p>23 digital files of in copyright books that were digitized</p> <p>24 by Google without the authorization of the rights</p> <p>25 holders?</p>
<p style="text-align: right;">Page 43</p> <p>1 there.</p> <p>2 Q. Great. So -- thank you. You mentioned</p> <p>3 that the digital files are used by people with print</p> <p>4 disabilities. Are those people limited to the</p> <p>5 University of Michigan community, or anyone?</p> <p>6 A. With respect to works that are from the</p> <p>7 University of Michigan files, yes, I believe it is</p> <p>8 limited to just the University of Michigan certified</p> <p>9 users.</p> <p>10 Q. And what is a certified user? What makes</p> <p>11 someone a certified user?</p> <p>12 A. There's an office in the university that</p> <p>13 determines whether people have print disabilities, and</p> <p>14 then of course the person has to be a member of the</p> <p>15 university community.</p> <p>16 Q. With respect to digital files of books that</p> <p>17 are in copyright and that were digitized without the</p> <p>18 authorization of the rights holder, to whom are those</p> <p>19 works or those digital files available for search</p> <p>20 purposes?</p> <p>21 MR. PETERSEN: Objection to form.</p> <p>22 BY MR. BONI:</p> <p>23 Q. You said you made them available for search.</p> <p>24 I'm asking available to whom?</p> <p>25 A. So to search for the -- search text as</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. PETERSEN: Objection to form.</p> <p>2 THE WITNESS: Again, the -- not</p> <p>3 knowing specifically about what the rights holders</p> <p>4 would think of such matters, the people with certified</p> <p>5 print disabilities who are members of the university</p> <p>6 community and incidentally to their duties to preserve</p> <p>7 the integrity of the files and such, so technical</p> <p>8 library work and computer work, the staff who are</p> <p>9 responsible for doing that work. They don't read the</p> <p>10 whole book, but they would have to read parts of books</p> <p>11 in order to do their work. That's it.</p> <p>12 BY MR. BONI:</p> <p>13 Q. And nobody other than those members of the</p> <p>14 University of Michigan community with print</p> <p>15 disabilities or those staff members in connection with</p> <p>16 the library or computer work are able to read the text</p> <p>17 of in copyright books whose digital files were given to</p> <p>18 the University of Michigan by Google?</p> <p>19 MS. DURIE: Objection, lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: Whose -- and it's</p> <p>22 not -- if you put it that way, then that's not right</p> <p>23 because there are works that were -- in copyright works</p> <p>24 that were made available to the University of Michigan</p> <p>25 through the -- from Google as part of this project</p>

12 (Pages 42 - 45)

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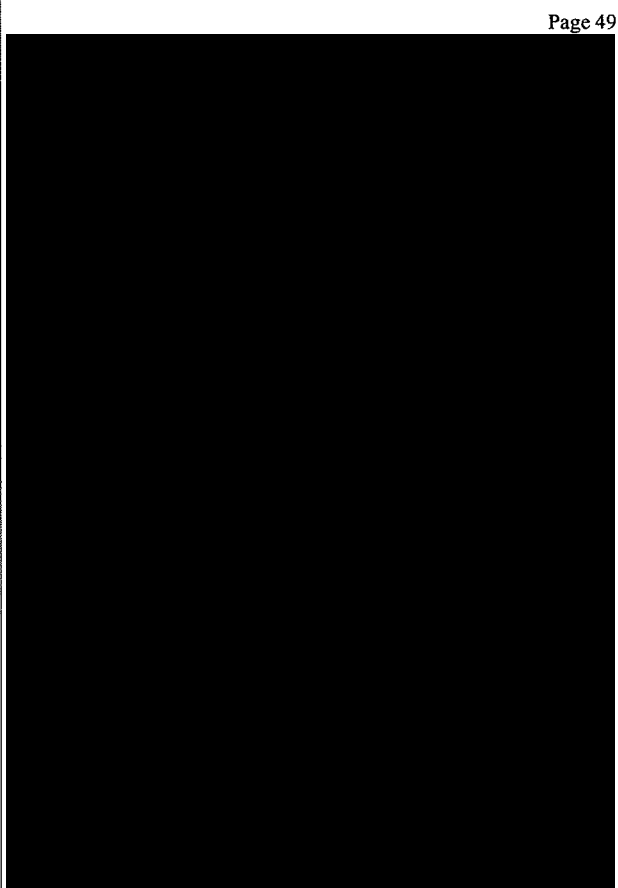
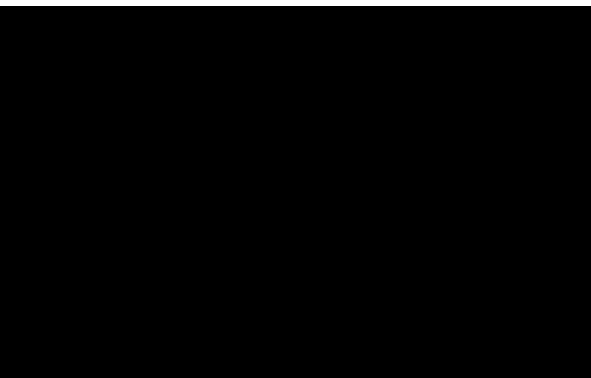
1 where we do have authorization from the rights holder.
 2 BY MR. BONI:
 3 Q. Right. So let me limit it to those works
 4 where the rights holder did not give authorization.
 5 A. So let me just try to see if I can get this
 6 set winnowed down to what it is. These are works that
 7 are in copyright, digitized by Google, a copy has come
 8 to the University of Michigan, and you're asking who
 9 can read the text of those works?
 10 Q. Correct.
 11 A. Right.
 12 Q. You mentioned those at the University of
 13 Michigan with print disabilities and then staff for
 14 technical and computer purposes --
 15 A. Yes.
 16 Q. -- and I'm asking you whether there is
 17 anyone else.
 18 A. There are some staff who are not staff at
 19 the University of Michigan associated with the mirror
 20 site at Indiana, and that's all I can think of.
 21 Q. Okay. Do you know whether any research
 22 has been conducted on the digital files which -- where
 23 the research does not involve reading the text of the
 24 books?
 25 MR. PETERSEN: Objection to form.

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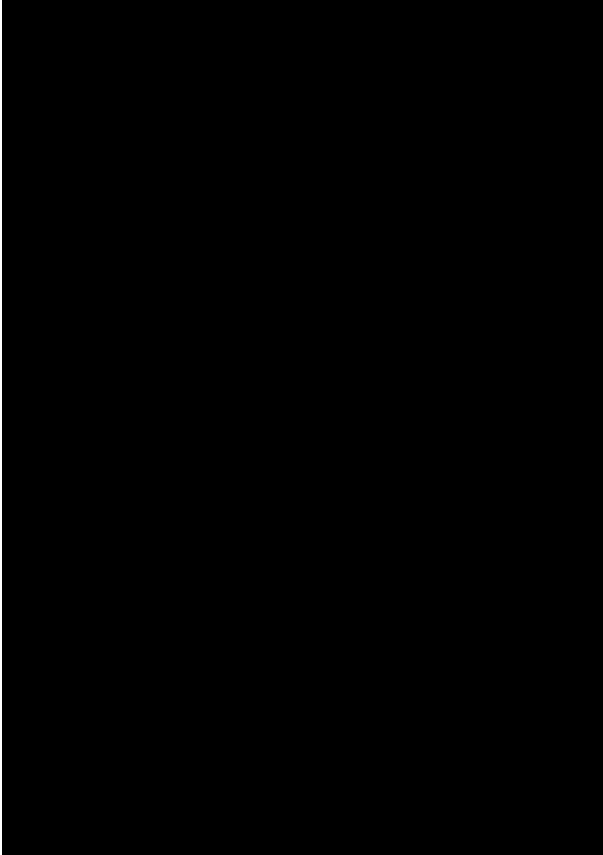
1 Research by whom?
 2 BY MR. BONI:
 3 Q. Anyone at the University of Michigan.
 4 A. So I actually don't specifically know
 5 because the cases that I know of, the kind of research
 6 you're describing, have largely been done on Google's
 7 files, but I would -- you know, so I don't specifically
 8 know is the right answer.
 9 Q. What research has been done on Google's
 10 files?
 11 A. Well, there's the engram project, which
 12 looks for the frequency of words in various languages
 13 over time, other elements of linguistic research,
 14 largely around questions of language, language
 15 development.
 16 Q. Has the University of Michigan been involved
 17 at all with those projects?
 18 A. The University of Michigan as a corporate
 19 entity has not. It's possible that faculty and staff
 20 and students at the University of Michigan have done
 21 some of that work.
 22 Q. Dr. Courant, does Google have any role,
 23 active role in connection with the operations of
 24 Hathi Trust?
 25 A. Google continues to digitize works, and we

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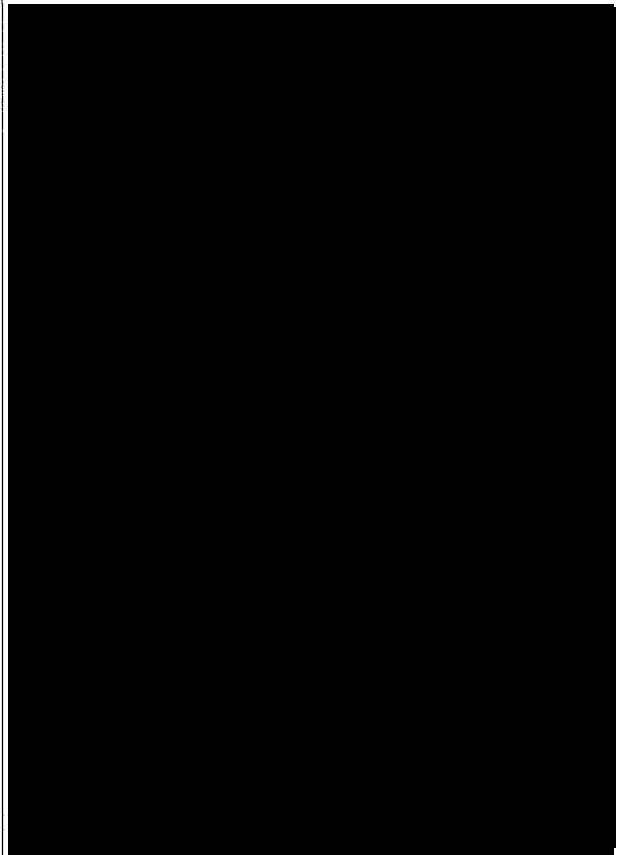
1 continue to take works from the project and put them
 2 into the Hathi Trust, so in that sense that's an active
 3 role I would say.
 4 Q. In any other sense?
 5 A. What sort of sense did you have in mind?
 6 Q. Well, for example, does it have a role in
 7 the governance of Hathi Trust?
 8 MR. PETERSEN: Objection to form.
 9 THE WITNESS: No.
 10 BY MR. BONI:
 11 Q. Does it control Hathi Trust's activities in
 12 any way?
 13 A. In the conventional use of the word control,
 14 no.



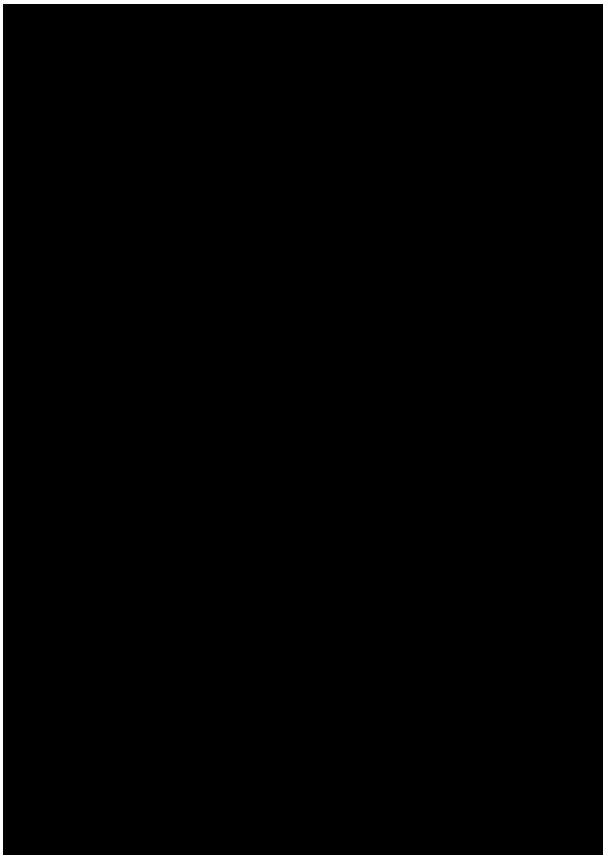
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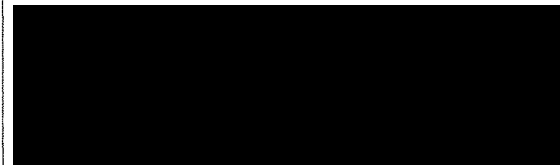
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Page 53



6 MR. BONI: All right. Let me --
7 here's what I'd like to do. I'd like to take a
8 five-minute break, and then I'm going to spend a few
9 minutes on the Answer, and then I'll be finished.

10 MS. DURIE: Okay.

11 MR. PETERSEN: That sounds good.

12 Thanks, Mike.

13 MR. BONI: Okay.

14 THE VIDEOGRAPHER: We're going off
15 the record, the time is 2:56 p.m.

16 (There was a recess taken.)

17 THE VIDEOGRAPHER: We're back on the
18 record, the time is 3:10 p.m.

19 BY MR. BONI:

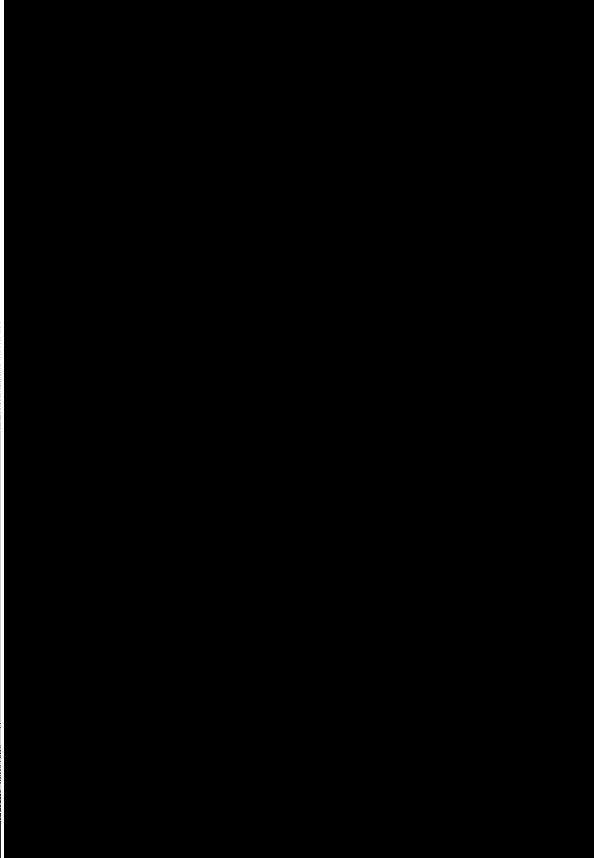
20 Q. Dr. Courant, is Google still digitizing
21 books from the University of Michigan libraries
22 collection?

23 A. Yes.

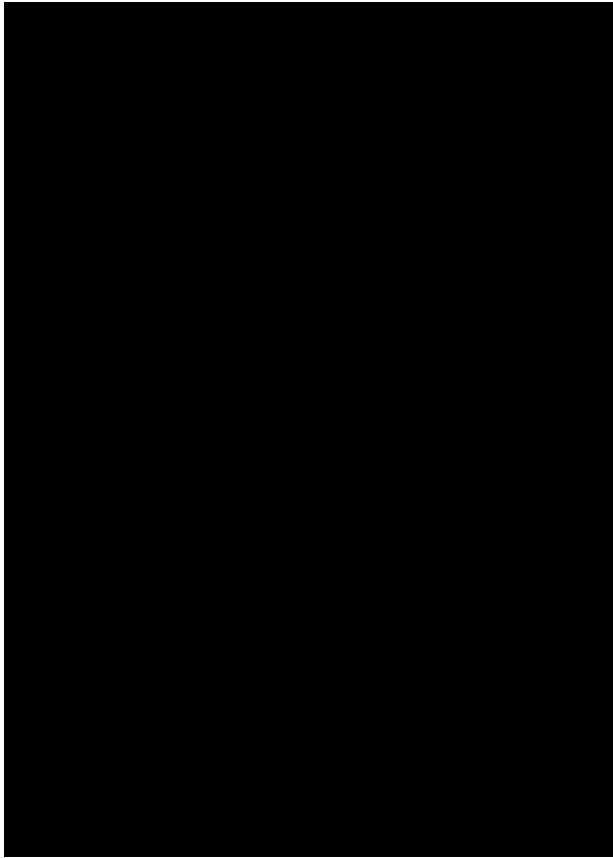


14 (Pages 50 - 53)

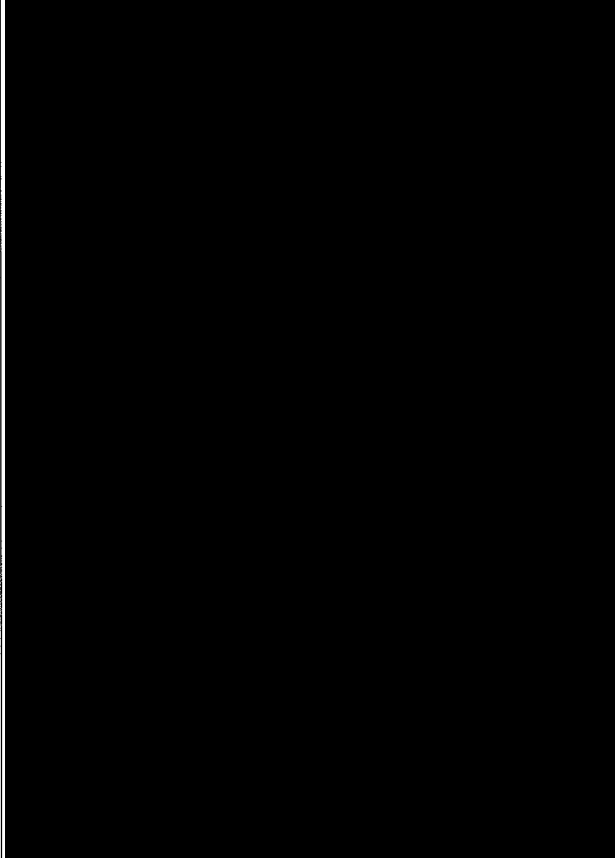
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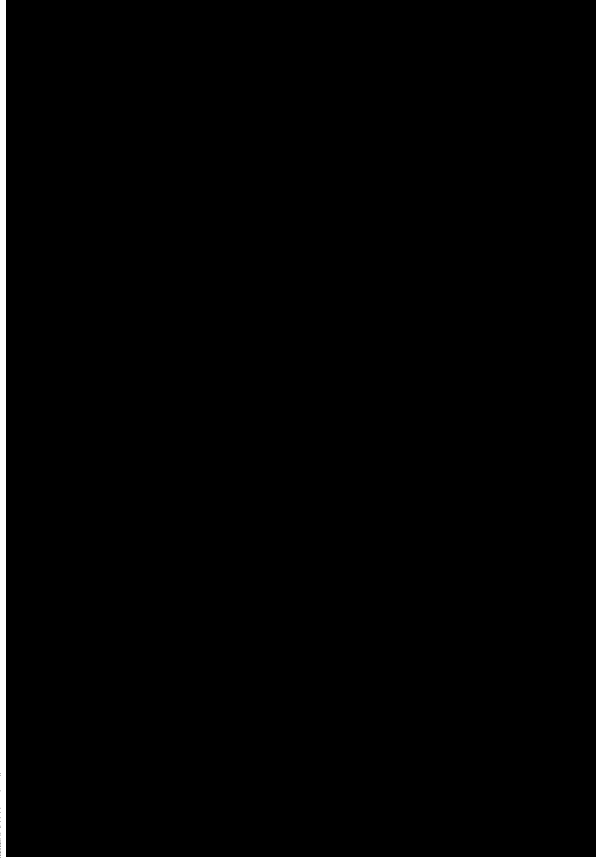
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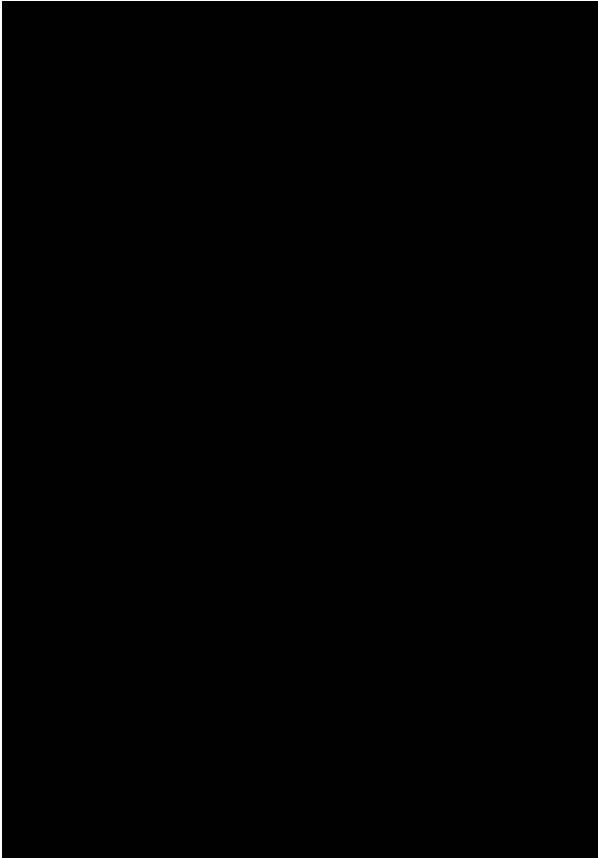
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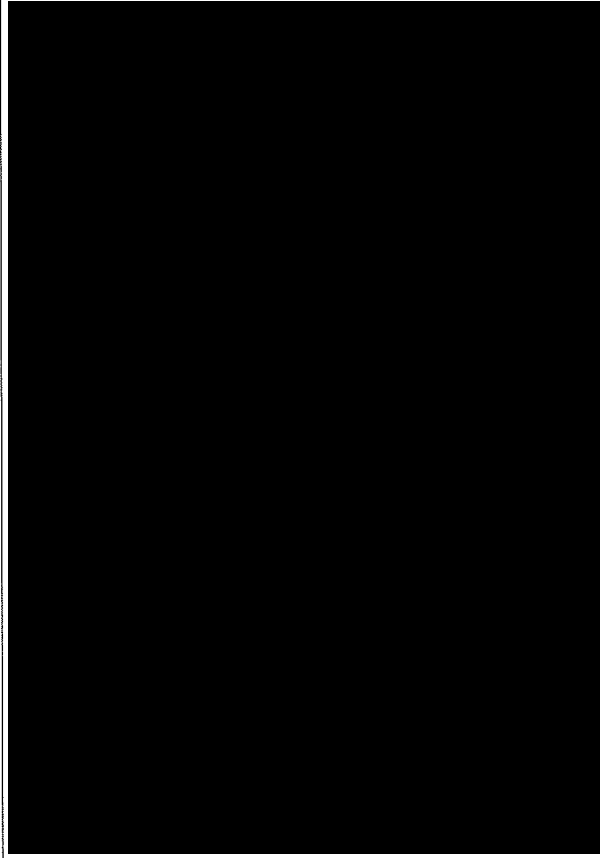
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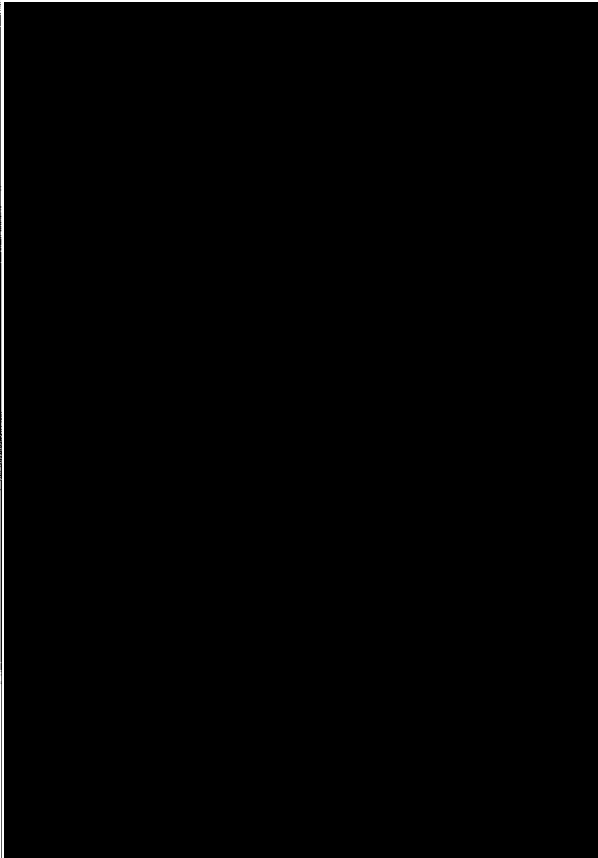
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Page 61

1 MR. BONI: Let me ask the court
2 reporter to put in front of the witness what has been
3 premarked UM 1 and UM 2.
4 MR. PETERSEN: So it's actually --
5 it's marked Courant 1 and Courant 2 --
6 MR. BONI: Oh, Courant.
7 MR. PETERSEN: -- Mike, and I'll let
8 you know that Courant 1 is the First Amended Complaint
9 and Courant 2 is the joint Answer and Defenses.
10 MR. BONI: Great. Thanks. And do
11 you guys -- I take it you and Daralyn have a copy?
12 MS. DURIE: We do.
13 MR. BONI: Okay. It doesn't matter
14 to me, but I know that there -- there is a deposition
15 in the other case, and I didn't want to confuse that
16 this was a -- this is a subpoena to the University of
17 Michigan, but Courant 1 and Courant 2 is fine with me.
18 BY MR. BONI:
19 Q. Dr. Courant, let me ask you whether you
20 recognize what has been marked Courant 1?
21 A. I haven't flipped through this copy of it,
22 but yes.
23 MR. PETERSEN: Why don't we give
24 Dr. Courant a few moments, Mike, to take a look at what
25 has been marked Exhibit 1.

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 BY MR. BONI:</p> <p>2 Q. Take all the time you need.</p> <p>3 A. I may need more time if you start asking</p> <p>4 specific questions about it, but I've seen this</p> <p>5 document before I read it.</p> <p>6 Q. Right. I only asked whether you recognized</p> <p>7 it and if you could simply, in your own words, describe</p> <p>8 what it is?</p> <p>9 A. Well, I recognize it, and it's my</p> <p>10 understanding that it is a Complaint from the</p> <p>11 Authors Guild and a number of other entities against</p> <p>12 the University of Michigan and a number of other</p> <p>13 entities with respect -- with regard to copying and</p> <p>14 holding a number of digital files at the University of</p> <p>15 Michigan and in the Hathi Trust.</p> <p>16 Q. Have you read the Complaint, the First</p> <p>17 Amended Complaint prior to today, sir?</p> <p>18 A. Yes.</p> <p>19 Q. How recently have you read it?</p> <p>20 A. Quite some time ago.</p> <p>21 Q. Okay. And am I right that a copy of the</p> <p>22 Complaint is kept somewhere at the University of</p> <p>23 Michigan, at the offices of the University of Michigan?</p> <p>24 MR. PETERSEN: Objection.</p> <p>25 Objection, lacks foundation.</p>	<p style="text-align: right;">Page 64</p> <p>1 copies in a repository called the Hathi Trust Digital</p> <p>2 Library, which contains at least 9.7 million volumes.</p> <p>3 My question is whether that number is accurate today</p> <p>4 or do you have another number for the number of</p> <p>5 volumes?</p> <p>6 A. The number of volumes now exceeds</p> <p>7 10 million. I don't have an exact number for today.</p> <p>8 Q. Okay. But it exceeds 10 million?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any sense of what percentage of</p> <p>11 the volumes are protected by U.S. copyright laws?</p> <p>12 MR. PETERSEN: Objection to form,</p> <p>13 vague. Objection, calls for a legal conclusion.</p> <p>14 Objection, lack of foundation.</p> <p>15 THE WITNESS: I have a -- I could</p> <p>16 speculate within a range, but I have no exact knowledge</p> <p>17 of what works are in copyright because it's actually</p> <p>18 quite difficult to determine whether a work is in</p> <p>19 copyright in many cases.</p> <p>20 BY MR. BONI:</p> <p>21 Q. Okay. On what do you base your ability to</p> <p>22 speculate as to a range of the percentage?</p> <p>23 MR. PETERSEN: Objection to form,</p> <p>24 vague. Mike, can you rephrase that?</p> <p>25 MR. BONI: Yeah.</p>
<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: I just -- I would be</p> <p>2 shocked if it were otherwise, but I do not know.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Let me ask you to look at Courant 2. Take</p> <p>5 all the time you need review it, and then I'll ask you</p> <p>6 questions about it.</p> <p>7 A. Yes.</p> <p>8 Q. Do you recognize that document, Dr. Courant?</p> <p>9 A. I do.</p> <p>10 Q. What is it?</p> <p>11 A. It is, as I understand it, since these are</p> <p>12 all matters of legal form in which I have no expertise,</p> <p>13 but this is the response of our attorneys to that</p> <p>14 Complaint that we just discussed.</p> <p>15 Q. Okay. And have you read -- have you read</p> <p>16 this document before today?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know how recently you read this</p> <p>19 document?</p> <p>20 A. I read it first quite some time ago, and I</p> <p>21 looked through it over the last few days.</p> <p>22 Q. Let me ask you to turn to the bottom of page</p> <p>23 three, the last two lines, where it reads, the uni --</p> <p>24 this is the second -- this is the latter part of a</p> <p>25 long sentence. The university stored these digital</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. BONI:</p> <p>2 Q. You said that you can speculate as to the</p> <p>3 percentage, so I'm asking --</p> <p>4 MR. PETERSEN: I don't think you</p> <p>5 want a record with speculation on it, Mike. I think</p> <p>6 you need to --</p> <p>7 BY MR. BONI:</p> <p>8 Q. I didn't ask for that. I'm asking how you</p> <p>9 can -- how you can give us a range of the percentage,</p> <p>10 Dr. Courant?</p> <p>11 A. Well, I may be being a little too much the</p> <p>12 empirical economist that I am, and so I make -- I make</p> <p>13 speculations on such data as I have. We consistently</p> <p>14 find -- we know that somewhere around 27 or 28 percent</p> <p>15 of the works are in the public domain, and I think it's</p> <p>16 reasonable to expect that the majority of the works</p> <p>17 that we haven't made that determination of are in</p> <p>18 copyright, and that would be a pretty broad range. So</p> <p>19 that's about as far as I can go.</p> <p>20 Q. Okay. Did you serve any role in the</p> <p>21 preparation of the Answer to the First Amended</p> <p>22 Complaint, what you have before you as Courant 2?</p> <p>23 MR. PETERSEN: Objection to form,</p> <p>24 vague.</p> <p>25 THE WITNESS: I looked at parts of</p>

17 (Pages 62 - 65)

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<p style="text-align: right;">Page 66</p> <p>1 it when it was being drafted.</p> <p>2 BY MR. BONI:</p> <p>3 Q. Prior to the time that it was filed?</p> <p>4 MR. PETERSEN: Mike, you're getting</p> <p>5 close. Obviously this is a legal document that was</p> <p>6 filed in connection with a lawsuit. There's a</p> <p>7 privilege issue.</p> <p>8 He can answer if he's seen the</p> <p>9 document before, but I'm going to assert privilege with</p> <p>10 respect to communications with counsel concerning the</p> <p>11 document and those types of issues on timing as to --</p> <p>12 as to timing as well, so --</p> <p>13 MR. BONI: Well, I'm not asking with</p> <p>14 whom -- actually, I could ask with whom he spoke, but</p> <p>15 I'm not, and I'm not asking what was said. I'm simply</p> <p>16 asking whether Dr. Courant reviewed the Answer prior to</p> <p>17 the time that it was filed with the court.</p> <p>18 MR. PETERSEN: He can answer that</p> <p>19 question -- if he recalls, then he can answer that, but</p> <p>20 in terms of any issue of substance, I'm going to assert</p> <p>21 the privilege.</p> <p>22 MR. BONI: Okay.</p> <p>23 THE WITNESS: I believe that I was</p> <p>24 in on discussions of the content of this before it was</p> <p>25 filed, but I may be remembering incorrectly.</p>	<p style="text-align: right;">Page 68</p> <p>1 think you're right, so let me strike that. I do recall</p> <p>2 asking that question before.</p> <p>3 BY MR. BONI:</p> <p>4 Q. What is meant in that statement by the term</p> <p>5 to make lawful uses of these works?</p> <p>6 MR. PETERSEN: Objection to form and</p> <p>7 objection, calls for a legal conclusion.</p> <p>8 THE WITNESS: So there are lots of</p> <p>9 plausible lawful uses of works -- of these works. One</p> <p>10 of them would be to make a list of them and make that</p> <p>11 list public. And, you know -- and -- and there may</p> <p>12 well be uses -- reading uses of these works that are</p> <p>13 lawful, including ones for the print disabled, and</p> <p>14 when this project -- as this project was designed on</p> <p>15 advice of counsel we had intended to make the works</p> <p>16 available to members of our community and --</p> <p>17 MR. PETERSEN: I instruct the</p> <p>18 witness not to divulge any attorney/client information.</p> <p>19 THE WITNESS: I'm sorry, okay. So</p> <p>20 the uses that we talked about earlier in response to a</p> <p>21 similar question.</p> <p>22 BY MR. BONI:</p> <p>23 Q. Did anyone tell you why Indiana University</p> <p>24 has not announced plans to participate in the Orphan</p> <p>25 Works Project?</p>
<p style="text-align: right;">Page 67</p> <p>1 BY MR. BONI:</p> <p>2 Q. Okay. At paragraph three on page four, it</p> <p>3 states that Defendants admit that UM and UC have</p> <p>4 announced their participation in the Orphan Works</p> <p>5 Project, an initiative to, inter alia, identify orphan</p> <p>6 works, and then hyphen, in copyright works for which</p> <p>7 the copyright holder cannot be found, hyphen, and</p> <p>8 eventually to make lawful uses of these works. Do you</p> <p>9 have an understanding of what is meant in that</p> <p>10 admission by the word eventually?</p> <p>11 MR. PETERSEN: Objection to form.</p> <p>12 THE WITNESS: In the -- in the</p> <p>13 context of the announcement, after there was</p> <p>14 determination that the work was an orphan work,</p> <p>15 including an open period in which the work would be</p> <p>16 displayed to the world as a potential orphan work, we</p> <p>17 would get to I think eventually.</p> <p>18 BY MR. BONI:</p> <p>19 Q. And as you sit here today, is it still</p> <p>20 the -- is it still the aim of the Orphan Works Project</p> <p>21 to identify orphan works?</p> <p>22 MR. PETERSEN: Objection to form,</p> <p>23 and objection, asked and answered. I believe</p> <p>24 Dr. Courant has already --</p> <p>25 MR. BONI: Yeah. You know what, I</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I don't recall having a specific</p> <p>2 conversation with people from Indiana about that.</p> <p>3 Q. Do you have any knowledge as you sit here</p> <p>4 today as to why Indiana University has not announced</p> <p>5 plans to participate in the Orphan Works Project?</p> <p>6 MR. PETERSEN: Objection to form and</p> <p>7 objection to the extent it calls for speculation.</p> <p>8 THE WITNESS: Yeah, I just, you</p> <p>9 know -- I find that speculating on other people's</p> <p>10 motives isn't a very good move.</p> <p>11 BY MR. BONI:</p> <p>12 Q. You have no idea why it made that decision?</p> <p>13 MR. PETERSEN: Objection, asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Am I supposed to</p> <p>16 respond?</p> <p>17 BY MR. BONI:</p> <p>18 Q. Yeah, you can respond.</p> <p>19 A. So I have lots of ideas. I just have no</p> <p>20 knowledge.</p> <p>21 Q. Right. What are those ideas?</p> <p>22 MR. PETERSEN: Objection, it calls</p> <p>23 for speculation. The witness told you he has no</p> <p>24 knowledge.</p> <p>25 MR. BONI: I'd like to know what his</p>

<p style="text-align: right;">Page 70</p> <p>1 ideas are. He just testified as to having ideas. 2 THE WITNESS: Somewhere in their 3 decision process they decided not to. 4 BY MR. BONI: 5 Q. Why not? 6 A. I don't know. 7 MR. PETERSEN: Same objection. 8 BY MR. BONI: 9 Q. And so when you testified that you had 10 ideas, do you have any other ideas as to why 11 Indiana University has not announced plans to 12 participate in the Orphan Works Project? 13 MR. PETERSEN: Objection to form. 14 Objection, calls for speculation. Objection, asked and 15 answered. 16 THE WITNESS: I assume that they 17 didn't -- haven't announced plans because they don't 18 mean to participate. 19 BY MR. BONI: 20 Q. Do you know why they don't mean to 21 participate -- 22 A. I do not know why. 23 Q. -- in the Orphan Works Project? 24 MR. PETERSEN: And objection, asked 25 and answered.</p>	<p style="text-align: right;">Page 72</p> <p>1 would be made available to authorized and authenticated 2 members of the University of Michigan community on the 3 basis that they could, on a -- such that they could 4 have reading access to it digitally online per the 5 number of books of that -- works of that title that we 6 had purchased in print form. In other words, they 7 would have essentially exactly the same use of the work 8 that they would have if they went into the library and 9 checked it out, but they could do it from their dorm 10 room. 11 BY MR. BONI: 12 Q. Okay. Let me ask you to turn to page ten. 13 The last sentence of paragraph 34, it's at the top of 14 page 10, says the Defendants further admit that UM is a 15 co-founder, host, and primary administrator of the 16 Hathi Service -- I'm sorry, the Hathi Trust Service and 17 is the largest contributor to the HDL, which contains 18 the collection of digital works with respect to which 19 the Hathi Trust Service operates. Do you see that 20 language, Dr. Courant? 21 A. Yes, poetry. 22 Q. What is meant by the term host in that 23 statement? 24 MR. PETERSEN: Objection, lacks 25 foundation.</p>
<p style="text-align: right;">Page 71</p> <p>1 THE WITNESS: I don't know why. 2 BY MR. BONI: 3 Q. Let me ask you to turn to paragraph 13 on 4 page five. Are you there? 5 A. Um-hum. 6 Q. I have the handicap of not seeing whether 7 you're here or not. 8 A. I'm here. 9 Q. Okay. The first sentence says, Defendants 10 admit that a book entitled "Good Troupers All: The 11 Story of Joseph Jefferson" by Gladys Malvorn was 12 digitized and included in the HDL and was 13 preliminary -- preliminarily identified as a book that 14 UM planned to make available on the limited basis 15 contemplated as part of the OWP if the copyright holder 16 were not identified, and then the sentence goes on. Do 17 you see that language, Dr. Courant? 18 A. I do. 19 Q. Can you tell me what is meant by the phrase 20 on the limited basis contemplated? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: Yes. As I believe 23 we've already discussed, works that were identified 24 as a -- as orphan works, which this work was not, it 25 was only preliminarily identified as an orphan works,</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: The U of M is the 2 place where and whence the works are held and can be 3 found and searched, etcetera. 4 BY MR. BONI: 5 Q. Do you know how it came to be that the 6 University of Michigan would be a host of the works, of 7 the digital files? 8 MR. PETERSEN: Objection to form, 9 vague. 10 THE WITNESS: The U of M at the time 11 that the Hathi Trust was founded already had the -- as 12 it says in this sentence actually, the largest 13 collection of such works and a active and functional 14 set of procedures for hosting them, and so we continued 15 in that role because we were the entity that was doing 16 that work already. 17 BY MR. BONI: 18 Q. How did the U of M come to develop an active 19 and functional set of services in that regard? 20 MR. PETERSEN: Objection to form. 21 THE WITNESS: We've discussed -- we 22 discussed earlier today the relationship -- the 23 U of M's making -- having files that came from the 24 Google scans. We put those -- used those files -- used 25 those files. We store those files on servers</p>

19 (Pages 70 - 73)

<p style="text-align: right;">Page 74</p> <p>1 maintained by U of M subject to a set of protocols, and</p> <p>2 the -- and so the starting place of Hathi Trust was</p> <p>3 that there were already many books that were being held</p> <p>4 by U of M, the U of M library at that point, in this</p> <p>5 way.</p> <p>6 BY MR. BONI:</p> <p>7 Q. And that is as a result of the Google</p> <p>8 Library Project?</p> <p>9 MR. PETERSEN: Objection to form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. BONI:</p> <p>12 Q. What is meant by -- so is UM the only host,</p> <p>13 or are there any other hosts? Is Indiana University --</p> <p>14 let me ask this question. Is Indiana University also a</p> <p>15 host?</p> <p>16 A. So if the word host is a legal term of art</p> <p>17 then I have to pull back because I don't know what</p> <p>18 its -- what its meaning is.</p> <p>19 Q. I'm not asking it as a legal term of art at</p> <p>20 all.</p> <p>21 MR. PETERSEN: Mike, why don't you</p> <p>22 just define --</p> <p>23 BY MR. BONI:</p> <p>24 Q. I don't know how it would be a legal term of</p> <p>25 art.</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. BONI:</p> <p>2 Q. Is Google also an administrator of the Hathi</p> <p>3 Trust Service?</p> <p>4 A. Not in any sense that I understand.</p> <p>5 Q. Okay. Are the other -- are the other</p> <p>6 schools in which U of M have those bilateral agreements</p> <p>7 considered administrators of the Hathi Trust Service?</p> <p>8 MR. PETERSEN: Objection to form.</p> <p>9 THE WITNESS: No, I shouldn't think</p> <p>10 so.</p> <p>11 BY MR. BONI:</p> <p>12 Q. So is U of M the only administrator of the</p> <p>13 Hathi Trust Service?</p> <p>14 MR. PETERSEN: Objection to form.</p> <p>15 THE WITNESS: I think that this --</p> <p>16 this language either contemplates the U of M alone or</p> <p>17 U of M and Indiana, Indiana in its role as the mirror</p> <p>18 site.</p> <p>19 BY MR. BONI:</p> <p>20 Q. Fair enough. Let me ask you to turn to the</p> <p>21 bottom of page 11. The last sentence on that -- I'm</p> <p>22 sorry, the second to last sentence on that page reads,</p> <p>23 Defendants admit that a fully operational, synchronized</p> <p>24 and live mirror site of the HDL is located on IU's</p> <p>25 Indianapolis campus. Do you see that language,</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. PETERSEN: Why don't you define</p> <p>2 host, Mike? That might be helpful.</p> <p>3 MR. BONI: Well, it's in your</p> <p>4 Answer, and we asked anyone to step forward on behalf</p> <p>5 of the University of Michigan to speak about the</p> <p>6 Answer, and here's Dr. Courant, so I'm asking what is</p> <p>7 meant in the Answer by host.</p> <p>8 MR. PETERSEN: And to the extent the</p> <p>9 witness knows, he can answer. To the extent he doesn't</p> <p>10 know, it's appropriate for him to say he doesn't know.</p> <p>11 THE WITNESS: So as the -- as a host</p> <p>12 for a copy of the files, both Michigan and Indiana are</p> <p>13 hosts.</p> <p>14 BY MR. BONI:</p> <p>15 Q. University of Michigan is a primary</p> <p>16 administrator of the Hathi Trust Service; is that</p> <p>17 correct?</p> <p>18 MR. PETERSEN: Objection to form.</p> <p>19 THE WITNESS: The Hathi Trust</p> <p>20 Service takes place under a series, a set of -- a</p> <p>21 large set of bilateral contracts between the University</p> <p>22 of Michigan and other universities and research</p> <p>23 entities, research libraries around the country, and</p> <p>24 thus the University of Michigan is the primary</p> <p>25 administrator.</p>	<p style="text-align: right;">Page 77</p> <p>1 Dr. Courant?</p> <p>2 A. Yes.</p> <p>3 Q. Is this what you were referring to</p> <p>4 previously as Indiana's mirror site --</p> <p>5 A. Yes.</p> <p>6 Q. -- of the Hathi Trust Digital Library?</p> <p>7 A. Yes.</p> <p>8 Q. What is meant by synchronized? Do you know?</p> <p>9 A. I think that's a technical term in the</p> <p>10 context of the computing activity, and so I would not</p> <p>11 opine on what it means in detail.</p> <p>12 Q. Do you know whether Indiana University</p> <p>13 offers for reading the full text of in copyright books</p> <p>14 to members of its community who are print disabled?</p> <p>15 MR. PETERSEN: Objection to form.</p> <p>16 THE WITNESS: I do not know.</p> <p>17 BY MR. BONI:</p> <p>18 Q. Do you know -- do you know what uses</p> <p>19 Indiana University makes of its mirror site of the</p> <p>20 Hathi Trust Digital Library?</p> <p>21 MR. PETERSEN: Objection to form.</p> <p>22 THE WITNESS: The principal use</p> <p>23 would be to store a duplicate set of the files.</p> <p>24 BY MR. BONI:</p> <p>25 Q. Do you know whether it does anything with</p>

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1 the mirror set of the Hathi Trust digital files other
 2 than that?
 3 MR. PETERSEN: Objection to form.
 4 THE WITNESS: I do not know.
 5 However, I would expect that they would -- the use --
 6 any use would be through the Hathi Trust interface.
 7 BY MR. BONI:
 8 Q. What do you mean by the Hathi Trust
 9 interface?
 10 A. www.hathitrust.org gives one a way of
 11 getting to many services of the Hathi Trust, largely
 12 around -- search around all works, as I've pointed out,
 13 and reading use of public domain works or other works
 14 that have been authorized for such use, and the
 15 institutions -- both institutions who are part of the
 16 Hathi Trust and institutions who are not, and just
 17 ordinary folks anywhere can go there and make those
 18 uses, and that is the mechanism that people use in
 19 order to make uses -- any uses of those files.
 20 Q. So by Hathi Trust interface you meant
 21 Hathi Trust's website, correct?
 22 A. Yeah.

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1 digital copies deposited in the HDL by some
 2 institutions have been delivered to the HDL over the
 3 Internet or via removable media, and then the sentence
 4 goes on. Do you see that language, Dr. Courant?
 5 A. Yes.
 6 Q. By whom have the digital copies been
 7 delivered to the Hathi Trust Digital Library?
 8 MR. PETERSEN: Objection to form.
 9 THE WITNESS: Do you want the names
 10 of people? 'Cause I wouldn't know.
 11 BY MR. BONI:
 12 Q. Or entities. Either one.
 13 MR. PETERSEN: Objection. Same
 14 objection.
 15 THE WITNESS: The -- many
 16 entities --
 17 BY MR. BONI:
 18 Q. Well, let me cut it short. Is Google one of
 19 those entities?
 20 A. Yes.
 21 Q. And earlier today you testified that the
 22 digital copies were delivered to the HDL over the
 23 Internet, but that you didn't know the inner workings
 24 of that. I'm paraphrasing. Do you recall that
 25 testimony?

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1 MR. PETERSEN: Objection,
 2 mischaracterizes the testimony.
 3 MR. BONI: Yeah, I don't mean to do
 4 that.
 5 THE WITNESS: I actually resisted
 6 the phrase "over the Internet" because I was concerned
 7 that that might imply the open web, and -- but so -- is
 8 that good enough?
 9 BY MR. BONI:
 10 Q. What term would you have used?
 11 MR. PETERSEN: Objection, asked and
 12 answered. He did answer these questions, Mike, at the
 13 beginning of the deposition.
 14 MR. BONI: I don't think he answered
 15 what term he would use instead of "over the Internet."
 16 MR. PETERSEN: I think he said
 17 secured server or words to that effect.
 18 THE WITNESS: Yeah, I would -- I
 19 would have said something about optical -- optical
 20 fiber networks. Optical fiber networks.
 21 BY MR. BONI:
 22 Q. Okay, all right. But not over the worldwide
 23 web?
 24 A. Again, I don't know the details of how these
 25 things work, but not in an insecure way.

<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. And then where it says via removable 2 media, do you have an idea of what is meant by 3 removable media? 4 A. At least in some cases hard drives, maybe 5 other media as well. 6 Q. Okay. Does UM have those hard drives today? 7 A. I do not know. 8 Q. So you would not know that if you had them 9 where they would be kept, right? 10 MR. PETERSEN: Objection. Objection 11 to form. 12 THE WITNESS: I think that follows, 13 yes. 14 BY MR. BONI: 15 Q. Okay. Let me ask you to go to paragraph 64 16 on page 18. It says at the top of the page, Defendants 17 admit that the incorporation of digital works and 18 their associated metadata into the HDL is performed at 19 MLibrary. What is -- what exactly goes into 20 incorporating the digital works and their associated 21 metadata? 22 MR. PETERSEN: Objection to form. 23 THE WITNESS: I can't tell you 24 exactly, but the HDL has a bibliographic record for the 25 works in it, and so when the works are taken into the</p>	<p style="text-align: right;">Page 84</p> <p>1 tapes are secured in any way from theft or misuse? 2 A. I believe that they are. 3 Q. Do you know how? 4 A. We're now way beyond my expertise. I 5 know that the people who are responsible for holding 6 those tapes are experienced in holding such things 7 securely. 8 Q. Are they employees -- those people to whom 9 you are referring, are they employed by University of 10 Michigan? 11 A. Yes. 12 Q. Okay. So this is U of M staff who are 13 responsible for the security of the backup tapes? 14 MR. PETERSEN: Objection to form. 15 Objection, asked and answered. 16 THE WITNESS: Yes. 17 BY MR. BONI: 18 Q. Who -- do you know who is in charge of that 19 staff? 20 A. The tapes are held by the Information 21 Technology Services at the university. The director of 22 that operation, the Chief Information Officer of the 23 university, is named Laura Patterson. 24 Q. And she's the chief technology officer at 25 U of M?</p>
<p style="text-align: right;">Page 83</p> <p>1 HDL, the associated metadata, title, author, publisher, 2 date, all this stuff that we carry around with records 3 of works has to be carefully linked to the works 4 themselves, made findable and so forth, and so 5 that's -- that's in broad outline the work that's being 6 done here as I understand it. 7 BY MR. BONI: 8 Q. And who at Michigan Library does that 9 incorporating? 10 A. The -- largely John Wilkin's staff. In 11 fact, I think exclusively John Wilkin's staff. 12 Q. Okay. In the next sentence it says 13 UM Regents, the Hathi Trust Service and IU Trustees 14 admit that the digital works and associated metadata 15 are replicated to an active mirror site located on 16 IU's Indianapolis campus and are stored on backup tapes 17 located at UM's facilities. Do you know -- and then 18 the sentence goes on. Do you know where at UM's 19 facilities the backup tapes are located? 20 MR. PETERSEN: Objection, vague. 21 THE WITNESS: I don't off the top of 22 my head, although there are addresses where those sites 23 are. 24 BY MR. BONI: 25 Q. Do you have any idea of whether those backup</p>	<p style="text-align: right;">Page 85</p> <p>1 A. She's the Chief Information Officer. 2 Q. All right, okay. Chief information, CIO, 3 all right. Who replicated the digital works and 4 associated metadata to the active mirror site at IU's 5 Indianapolis campus? 6 MR. PETERSEN: Objection to form. 7 THE WITNESS: That work would have 8 been done under the general direction of John Wilkin 9 and his counterpoints at Indiana -- counterparts at 10 Indiana. 11 BY MR. BONI: 12 Q. Okay. On page 19 in paragraph 67, it's 13 right in the middle of the page, it says in the 14 second sentence, Defendants also admit that the 15 Hathi Trust Service preserves and secures books that 16 are in copyright, published, and commercially 17 available. Do you see that language, Dr. Courant? 18 A. I do. 19 Q. In what way does Hathi Trust preserve the 20 books referenced here? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: The Hathi Trust is an 23 operation of the library and has a time scale for 24 preserving its assets that extends into the indefinite 25 future.</p>

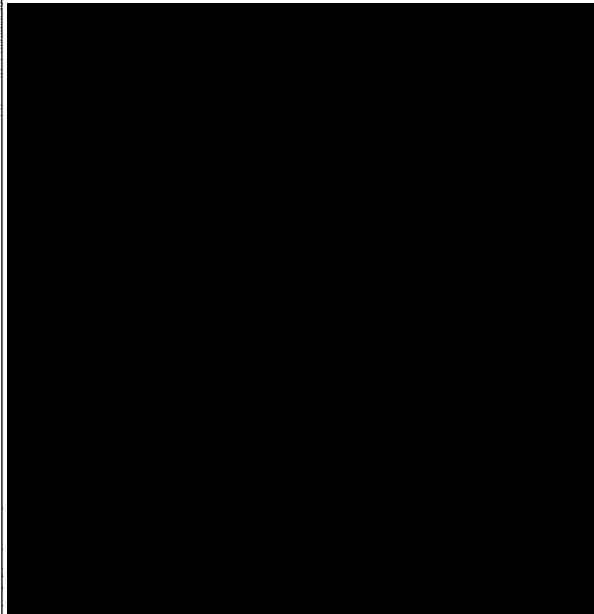
22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 BY MR. BONI:</p> <p>2 Q. What are its assets?</p> <p>3 A. Its holdings, copies of works. Assets may</p> <p>4 not have been the best word, but copies of works. And</p> <p>5 works are subject to -- print works are subject to all</p> <p>6 manner of risk of deterioration and destruction over</p> <p>7 time, and so the sense in which these works are</p> <p>8 preserved is that we would intend to keep a copy, as I</p> <p>9 said, into the indefinite future against the</p> <p>10 possibility that the -- that other copies would</p> <p>11 disappear.</p> <p>12 MS. DURIE: Can you do me a favor?</p> <p>13 Can I just get you to move the bottle to one side? The</p> <p>14 videographer was just saying it was blocking.</p> <p>15 THE WITNESS: Oh, sure.</p> <p>16 MS. DURIE: Thanks.</p> <p>17 BY MR. BONI:</p> <p>18 Q. Let me ask you to turn to page 21, paragraph</p> <p>19 78.</p> <p>20 A. I'm there.</p> <p>21 Q. There is a block quote there. It appears to</p> <p>22 be a statement from Michigan Library. And it states,</p> <p>23 this tells us that our pilot process is flawed,</p> <p>24 referring to the potential orphan works. Can you tell</p> <p>25 me what that -- what is meant by the pilot process</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. PETERSEN: Objection to form,</p> <p>2 vague.</p> <p>3 THE WITNESS: Other than what?</p> <p>4 BY MR. BONI:</p> <p>5 Q. Sources. Do the people who do the -- who</p> <p>6 try to identify orphan -- you know what, let me ask you</p> <p>7 this question. Throughout the deposition you've</p> <p>8 referred to the term orphan works. What do you mean by</p> <p>9 orphan works?</p> <p>10 A. Works that are in copyright for which a</p> <p>11 rights holder cannot be found.</p> <p>12 Q. For those at U of M seeking to identify --</p> <p>13 trying to identify the rights holders of potential</p> <p>14 orphan works, do you know whether those people have, as</p> <p>15 a result of the errors identified, considered other</p> <p>16 sources, other sources to determine the identity of the</p> <p>17 rights holders?</p> <p>18 MR. PETERSEN: Objection, form,</p> <p>19 vague. Objection, lacks foundation.</p> <p>20 THE WITNESS: And I need ask, other</p> <p>21 sources than what?</p> <p>22 BY MR. BONI:</p> <p>23 Q. Yeah, other -- other -- other sources of</p> <p>24 investigation, of research?</p> <p>25 MR. PETERSEN: Objection, same</p>
<p style="text-align: right;">Page 87</p> <p>1 being flawed?</p> <p>2 A. Yeah. It's actually stated very well in the</p> <p>3 previous sentence. The close and welcome scrutiny of</p> <p>4 the list of potential orphan works has revealed a</p> <p>5 number of errors, some of them serious. The errors</p> <p>6 were classifying some things as potential orphan works</p> <p>7 that in -- that -- that we should have been able to see</p> <p>8 more easily than we did were actually not potential</p> <p>9 orphan works.</p> <p>10 Q. Has the pilot process changed as a result of</p> <p>11 the errors --</p> <p>12 MR. PETERSEN: Objection to form.</p> <p>13 BY MR. BONI:</p> <p>14 Q. -- discovered?</p> <p>15 MR. PETERSEN: Objection, lacks</p> <p>16 foundation.</p> <p>17 THE WITNESS: We are -- we are -- we</p> <p>18 have changed a good deal of the process in response to</p> <p>19 what we learned last fall.</p> <p>20 BY MR. BONI:</p> <p>21 Q. How so?</p> <p>22 A. Here, to get into the details I would have</p> <p>23 to refer to the people who do the work in detail, but</p> <p>24 more time, more care, more eyeballs on the case.</p> <p>25 Q. Are there other sources that are considered?</p>	<p style="text-align: right;">Page 89</p> <p>1 objection. And it lacks foundation.</p> <p>2 THE WITNESS: So I don't know at --</p> <p>3 I mean when you improve a process you do things other</p> <p>4 than what you did before, so that answer would be yes.</p> <p>5 But I -- the use of the word sources, this isn't a</p> <p>6 matter of looking things up in the International</p> <p>7 Register of Orphan Works. If we had that we would in</p> <p>8 much better -- this it wouldn't be a problem.</p> <p>9 BY MR. BONI:</p> <p>10 Q. Understood. So tell me -- tell me what you</p> <p>11 know about what is done to identify the rights holders</p> <p>12 of potential orphan works --</p> <p>13 MR. PETERSEN: Objection.</p> <p>14 BY MR. BONI:</p> <p>15 Q. -- as part of the Orphan Works Project?</p> <p>16 MR. PETERSEN: Objection, asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: I note that it's very</p> <p>19 important here to be considering -- there's a potential</p> <p>20 orphan works part of the process, and then there is a</p> <p>21 part of the process that involves publishing the list</p> <p>22 of potential orphan works and inviting the world to</p> <p>23 comment on that, and that part of the process actually</p> <p>24 has worked well in that it has identified a number of</p> <p>25 works that were potential orphans that proved not to</p>

23 (Pages 86 - 89)


<p style="text-align: right;">Page 90</p> <p>1 be, and I actually believe that that will be a vital 2 part of any process going forward to identify -- to 3 identify orphan works. 4 The first thing was to look for is 5 the publisher still alive, does the publisher still 6 exist. If the answer to that question was yes, we 7 stopped. Note that in many cases where the publisher 8 exists, the work still might well be out of copyright 9 and we could go back and look, keep a record of those 10 works. We were developing a record of publishers that 11 are -- that are findable. 12 And then move from publisher to 13 author, similar set of questions. And then the 14 question of whether then look for the -- if the book 15 were for sale that would obviously mean that it wasn't 16 an orphan. 17 So there is a nested set of 18 searches starting with actually is it for sale and then 19 going to publisher and then looking for information 20 about authors, and also a mechanism whereby a second 21 investigator would go through the process without 22 having information from the first investigator. 23 BY MR. BONI: 24 Q. Dr. Courant, are you aware that the 25 Authors Guild identified at least one rights holder of</p>	<p style="text-align: right;">Page 92</p> <p>1 they exist? 2 MR. PETERSEN: Objection to form, 3 vague. Objection, mischaracterizes testimony as to the 4 process. 5 BY MR. BONI: 6 Q. You can answer. 7 A. The answer is certainly not. Certainly not. 8 MR. BONI: All right. Thank you, 9 Dr. Courant. I have no further questions. 10 MS. DURIE: Great, thank you. I 11 have a few questions for you. Do you want to take a 12 short break first? 13 THE WITNESS: I would like that. 14 MS. DURIE: Great, then we can do 15 that. 16 THE VIDEOGRAPHER: We're going off 17 the record, the time is 4:01 p.m. 18 (There was a recess taken.) 19 THE VIDEOGRAPHER: We are back on 20 the record, the time is 4:12 p.m. 21 MS. DURIE: Thanks. 22 EXAMINATION BY MS. DURIE: 23 Q. Good afternoon, Dr. Courant. I introduced 24 myself off the record. As you know, I represent Google 25 in the Authors Guild versus Google litigation. I have</p>
<p style="text-align: right;">Page 91</p> <p>1 a book that was on the list that you referred to in 2 your previous testimony that was considered a potential 3 orphan works? 4 A. Yes. 5 Q. Orphan work, I'm sorry. 6 A. Considered a potential orphan work, yes. 7 Q. Right. And do you know whether -- had the 8 Authors Guild not advised the Hathi Trust of that book, 9 would Hathi Trust have displayed the full text of that 10 work? 11 MR. PETERSEN: Objection. Objection 12 to form, calls for speculation. 13 THE WITNESS: Yeah, we will -- it 14 is -- this is speculative, and the only accurate answer 15 is we will never know. 16 BY MR. BONI: 17 Q. Why is that? 18 A. Because we had a good long time before the 19 work was scheduled to be displayed, and many people 20 other than members of the Authors Guild had access to 21 that list of works. 22 Q. Is the Hathi Trust process -- I'm sorry, the 23 Orphan Works Project, the process of identifying orphan 24 works wholly dependent on rights holders coming forward 25 and notifying the project that they are there, that</p>	<p style="text-align: right;">Page 93</p> <p>1 just a few questions for you, and I will endeavor to be 2 brief. 3 When did you join the faculty of the 4 University of Michigan? 5 A. 1973. 6 Q. Can you just describe for me very briefly 7 your educational background? 8 A. I went to high school in Bayport, 9 Long Island, and then went to college at Swarthmore 10 College, got my BA in history in 1968, and then did a 11 few things for a few years and went to Princeton, got a 12 Ph.D. from Princeton in economics. Actually, the 13 degree was awarded in 1974, shortly after I got here. 14 Q. Can you give me a brief overview of your 15 academic career at the University of Michigan? 16 A. I was hired as an assistant professor in 17 economics and public policy. As I said, I got here in 18 1973. My work in those days was largely on urban 19 economics, housing, housing discrimination and 20 segregation, then moved more broadly into public 21 policy, behavior of governments, taxes at the local and 22 state level and economic development as well, and also 23 federal tax policy and budget policy. 24 I spent a year on the staff of the 25 Council of Economic Advisers in Washington in the late</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 '70s doing principally budget policy and health 2 policy. I came back to Michigan. I've stayed in those 3 fields, although I've done a fair amount of work on 4 gender discrimination as well, and then moved into 5 administrative roles. I became director of what was 6 then called the Institute of Public Policy Studies, it 7 might have been 1982, somewhere around there. It's now 8 the Ford School. 9 And then after several years in 10 that role went back to the faculty for a while, then 11 did that again for a while, was Chair of the Economics 12 Department and was appointed -- I wrote a good book 13 about federal budget deficits along the way there, 14 which is -- which I've turned into public domain, is 15 available on Google Book Search for free if anybody 16 wants to read it. 17 Came to work for the provost then, 18 Nancy Cantor, in 1998 maybe, '97, '98. She hired me as 19 vice provost for budget. Did that for several years. 20 When she left the university, after a brief interim 21 period I was appointed provost and executive vice 22 president for academic affairs and served in that role 23 from 2002 through most of 2005. 24 Back to the faculty. Now in that 25 period I got interested in libraries and started</p>	<p style="text-align: right;">Page 96</p> <p>1 that? 2 A. I thought it was an extremely interesting 3 and positive development. 4 Q. Why was that? 5 A. So really a number of reasons. We had been 6 digitizing our collections ourselves at the rate of 7 about 10,000 volumes a year give or take, and at that 8 rate it was going to take 900 years or so to get the 9 job done. And in fact, it would have taken longer 10 because we're still acquiring works. 11 And so suddenly it became possible 12 to imagine digitizing close to the whole -- the whole 13 library, and that provided in turn a number of benefits 14 that struck me then and strike me now as being very, 15 very important. One, which is really huge, is this 16 notion of search that I talked about earlier. Having 17 the full text available for search of the works in the 18 library allows people, scholars, students, faculty, to 19 find works that have subject matter that might not be 20 apparent until the old card catalogs. 21 The old catalog would give you three 22 entries, and if it turned out there was something else 23 important that was number four, it's not there. But if 24 it turns out that that 4th or 5th or 6th use has words 25 that are characteristic, you can find them in the works</p>
<p style="text-align: right;">Page 95</p> <p>1 writing papers about libraries, and then along the way 2 had written -- done a fair amount of research on the 3 economic and policy aspects of higher education, areas 4 in which I still continue to do some work, and then 5 was appointed library dean in -- whatever that would 6 be, 2007.</p>  <p>25 Q. What was your reaction when you heard about</p>	<p style="text-align: right;">Page 97</p> <p>1 in the library and then come to the library and use 2 them. 3 The second enormous advantage has to 4 do with preservation. Many works in the library, 5 millions certainly, several millions, were printed on 6 acid paper, which means that they have within them the 7 seeds of their own -- their own destruction. It's a 8 phenomenon you will have noticed. You know, from time 9 to time you take an old paperback especially or an old 10 newspaper off the shelf and it just turns into 11 cornflakes and then dust in your hands. That's what 12 happens to works on acid paper, and in time it happens 13 to all of them. 14 And by -- knowing that there are 15 millions of such works, identifying them one by one is 16 sort of inconceivably difficult. You have to go to the 17 shelves. I mean it just -- you know, millions or -- 18 that's a big number, and, you know, I just can't 19 imagine the amount of effort that would be involved in 20 finding them one by one. 21 If we go through this process of 22 digitizing essentially the whole collection we then 23 have a preservation copy of works that would otherwise 24 disappear without replacement. These works now will in 25 due course disappear, in due time, but we will be able</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 to construct a replacement from the digital files. So</p> <p>2 that struck me as being, you know, an independence of</p> <p>3 two now big uses of the digitized files. The third,</p> <p>4 obviously very important, is to be able to make</p> <p>5 available to people with print disabilities in a timely</p> <p>6 way access to these works.</p> <p>7 Q. You mentioned earlier in your testimony</p> <p>8 making works available to people with print</p> <p>9 disabilities. What does it mean to have a print</p> <p>10 disability?</p> <p>11 A. I'm no expert in this field, but basically</p> <p>12 it means to have basically bad eyesight, to make it</p> <p>13 such that it is difficult to read text in the form in</p> <p>14 which it -- difficult or impossible to read text in the</p> <p>15 form in which -- I mean one form of print disability is</p> <p>16 total blindness.</p> <p>17 Q. And how is it that you're able to make these</p> <p>18 works available to people who do have a difficult time</p> <p>19 reading them?</p> <p>20 A. Again, this is not my field of expertise,</p> <p>21 but in some cases it's as simple as being able to blow</p> <p>22 up the size of a font so that things can be read, or to</p> <p>23 work with contrast. In some cases where people's</p> <p>24 disability is more serious than that such that they</p> <p>25 really can't read at all, there are text-to-voice</p>	<p style="text-align: right;">Page 100</p> <p>1 and I'm going to instruct the witness not to divulge</p> <p>2 any attorney/client privileged information. The</p> <p>3 General Counsel's office at the University of Michigan</p> <p>4 was involved in those discussions, and so again, I</p> <p>5 caution the witness to not divulge attorney/client</p> <p>6 privileged information.</p> <p>7 THE WITNESS: So the General</p> <p>8 Counsel's office was indeed involved in most of those</p> <p>9 or at least many of those discussions, and certainly</p> <p>10 was involved in the ones that led to the policy choices</p> <p>11 that we made.</p> <p>12 BY MS. DURIE:</p> <p>13 Q. Okay, fair enough. You testified earlier</p> <p>14 that Google and the University of Michigan entered into</p> <p>15 a cooperative agreement; is that right?</p> <p>16 A. That's correct.</p> <p>17 Q. Did that cooperative agreement provide that</p> <p>18 the parties would respect copyright laws?</p> <p>19 A. Pardon me? Say it again?</p> <p>20 Q. Did the cooperative agreement provide that</p> <p>21 the parties would respect the copyright laws?</p> <p>22 MR. PETERSEN: I'm going to object.</p> <p>23 If you want to show him a copy of the agreement --</p> <p>24 MS. DURIE: Sure.</p> <p>25 MR. PETERSEN: -- I think that's the</p>
<p style="text-align: right;">Page 99</p> <p>1 protocols that allow the work to be rendered in a form</p> <p>2 where it can be heard, indeed at very high speed for</p> <p>3 people who are trained to hear this way, rather than</p> <p>4 read in the usual physical way.</p> <p>5 Q. Did you consider the potential impact of</p> <p>6 this project on authors?</p> <p>7 MR. BONI: I'm sorry, I didn't hear</p> <p>8 the question.</p> <p>9 BY MS. DURIE:</p> <p>10 Q. Did you consider the potential impact of</p> <p>11 this project on authors?</p> <p>12 A. We were -- authors as a group. Of course I</p> <p>13 am an author. We did, in a -- but in a -- in a sort of</p> <p>14 what impact kind of way. So the impact of these</p> <p>15 digitizations on authors, we saw no market effect. We</p> <p>16 spent some time talking about that. And indeed, seems</p> <p>17 likely to me, although by no means a sure thing, so</p> <p>18 this is speculation, and it was speculation at the</p> <p>19 time, that the search capability would lead to some</p> <p>20 works that were otherwise never gonna be found being</p> <p>21 found and market might appear for them, who knows.</p> <p>22 Q. You said that you did have discussions</p> <p>23 regarding potential market effects. What did you</p> <p>24 discuss in that regard?</p> <p>25 MR. PETERSEN: I'm going to object</p>	<p style="text-align: right;">Page 101</p> <p>1 appropriate way to do that, so --</p> <p>2 MS. DURIE: I'm happy to do that.</p> <p>3 Let's --</p> <p>4 MR. BONI: Let me just add, Daralyn,</p> <p>5 I'm straining to hear you.</p> <p>6 MS. DURIE: Sorry.</p> <p>7 MR. BONI: Yeah.</p> <p>8 MS. DURIE: I'll try to keep my</p> <p>9 voice up, Mike.</p> <p>10 MR. BONI: Thank you.</p> <p>11 MS. DURIE: And if I can have marked</p> <p>12 as the next exhibit a copy of a document GOOG 05000355</p> <p>13 through 366. Sorry, Mike, I can't hand you a copy.</p> <p>14 MR. BONI: I have it. I just</p> <p>15 couldn't mark it before.</p> <p>16 MR. PETERSEN: This is 3?</p> <p>17 MS. DURIE: Yeah.</p> <p>18 DEPOSITION EXHIBIT 3</p> <p>19 Cooperative Agreement</p> <p>20 WAS MARKED BY THE REPORTER</p> <p>21 FOR IDENTIFICATION</p> <div style="background-color: black; height: 50px; width: 100%;"></div>

<p style="text-align: right;">Page 102</p>  <p>12 Q. That's fine. You can set that aside. That 13 was my only question -- 14 A. Okay. 15 Q. -- with respect to that document. Can you 16 give me a sense, Dr. Courant of the size of the 17 University of Michigan collection? 18 A. Oddly enough, that is not as simple as you 19 would think. For one thing, the University of 20 Michigan's agreement for digitization involves several 21 libraries in the university that I'm not responsible 22 for. The law school library, the business school 23 library, which is called the Kellogg -- no, yeah, 24 the -- is that right? The business school library, 25 yeah, the Michigan historical collection, which is the</p>	<p style="text-align: right;">Page 104</p> <p>1 to form on that as well. 2 THE WITNESS: The works range from 3 the -- there's some bound volumes, which was the 4 purview of the agreement, range from the very beginning 5 of publishing to the present day and all manners of 6 subject matters. I often say that we hold the 7 scholarly and cultural record, so if you could construe 8 it as part of the scholarly or cultural record, we are 9 likely to have significant numbers of works in it, also 10 reference. So a very -- it's a very diverse, very 11 broad collection of works. 12 BY MS. DURIE: 13 Q. You testified earlier that the University of 14 Michigan had used digital copies that it had 15 obtained of works in this collection to create its own 16 searchable index; is that right? 17 MR. PETERSEN: Objection to form. 18 MR. BONI: I'm sorry, I couldn't 19 hear the tail end of that question. 20 MS. DURIE: Sorry. To create its 21 own searchable index. 22 THE WITNESS: Not as such. Although 23 those works were searchable, the number is so small 24 that having an index of a tiny fraction of a collection 25 is uninteresting.</p>
<p style="text-align: right;">Page 103</p> <p>1 Bentley Library, and a special collections library 2 called the Clements Library, are all contemplated by 3 the project and the agreement but are not part of the 4 University of Michigan Library System. 5 That said, the University Library 6 System holds approximately -- oh, and I should also 7 mention the University of Michigan at Flint and the 8 University of Michigan at Dearborn are also 9 contemplated in the agreement and are not part of the 10 University of Michigan Library System. The University 11 of Michigan Libraries, the part that I'm dean of, has 12 approximately 8 million volumes in it. 13 Q. Can you give me a sense of, and I realize 14 this is a very broad question, but the types of works 15 that are encompassed within those 8 million volumes? 16 MR. BONI: Object to form. 17 THE WITNESS: Lots of works of 18 many types. So without knowing what you mean by 19 types -- 20 BY MS. DURIE: 21 Q. I just want to get a sense of what kinds of 22 works are in there, what is the age range of these 23 works, what are the kinds of topics that they embrace, 24 what is the diversity within this collection? 25 MR. PETERSEN: I'm going to object</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MS. DURIE: 2 Q. I'm sorry, I apologize. Is it correct that 3 the University of Michigan has used copies of -- 4 digital copies of books that were scanned by Google to 5 create a searchable index? 6 A. As part of this project? 7 Q. Yes. 8 A. Yes. 9 Q. And what was the reason for doing that? 10 A. I think I described it earlier, that it 11 enables users to find things reliably and easily that 12 they would otherwise not be able to find. 13 Q. You also mentioned the display, using the 14 work to allow people with print disabilities to gain 15 access to works that they otherwise would not be able 16 to read. Has the University of Michigan made any 17 actual displays of works in its collection of any of 18 the works as part of the search -- strike that. That 19 was terrible question. 20 In connection with this 21 searchable index, does the University of Michigan allow 22 users to read works that are returned from that 23 searchable index if those works are deemed to be in 24 copyright? 25 MR. PETERSEN: So we're off the</p>

27 (Pages 102 - 105)

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<p style="text-align: right;">Page 106</p> <p>1 subject of students with print disabilities?</p> <p>2 MS. DURIE: Correct.</p> <p>3 MR. PETERSEN: This is a</p> <p>4 different -- okay.</p> <p>5 THE WITNESS: In cases where the</p> <p>6 rights holder has authorized it, yes.</p> <p>7 BY MS. DURIE:</p> <p>8 Q. To the extent that the rights holder has not</p> <p>9 authorized it, does the University of Michigan allow</p> <p>10 individuals to see the complete copies of works that</p> <p>11 are returned as search results if those works are in</p> <p>12 copyright?</p> <p>13 MR. PETERSEN: And you're excluding</p> <p>14 students with print disabilities?</p> <p>15 BY MS. DURIE:</p> <p>16 Q. Excluding students with print disabilities.</p> <p>17 A. If the works are either in copyright or not</p> <p>18 known to be not in copyright, no.</p> <p>19 Q. Has the University of Michigan --</p> <p>20 A. Did I get that grammar right?</p> <p>21 Q. Yeah.</p> <p>22 A. I believe so.</p> <p>23 Q. Yes. Has the University of Michigan put</p> <p>24 security measures in place to protect all of the</p> <p>25 various digital copies that exist of these works?</p>	<p style="text-align: right;">Page 108</p> <p>1 entity?</p> <p>2 A. Approximately 20 -- a little bit under</p> <p>3 20 million dollars a year.</p> <p>4 Q. Has that budget been affected in any way by</p> <p>5 the Google Library Project? In other words, has that,</p> <p>6 for example, caused your budget to go down?</p> <p>7 MR. PETERSEN: When you say budget,</p> <p>8 for acquisitions?</p> <p>9 BY MS. DURIE:</p> <p>10 Q. For acquisitions, acquisitions.</p> <p>11 A. Certainly not in any direct way. Indirectly</p> <p>12 the Google Library Project has enhanced the reputation</p> <p>13 of the library, therefore possibly improved our</p> <p>14 political ability to get resources from the provost.</p> <p>15 Q. Okay. But it is not then the case I take it</p> <p>16 that the fact that you have digital copies of the works</p> <p>17 in your collection has itself caused you to start</p> <p>18 spending less money on book acquisition?</p> <p>19 A. No.</p> <p>20 Q. Have there ever been circumstances where the</p> <p>21 University of Michigan has bought additional paper</p> <p>22 copies of books that it has in digital form as a result</p> <p>23 of its participation in the Google Library Project?</p> <p>24 A. So we have a dangling modifier here. So we</p> <p>25 have it in digital form as a result of the Google</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Again, we're talking about this set of works</p> <p>2 that we do not know to be in the public domain?</p> <p>3 Q. Correct.</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of any breaches that have</p> <p>6 taken place that have allowed those works to become</p> <p>7 part of the public domain --</p> <p>8 A. No.</p> <p>9 Q. -- security breaches? Does the University</p> <p>10 of Michigan have a budget for the acquisition of new</p> <p>11 works?</p> <p>12 A. Yes.</p> <p>13 Q. Is that budget broken down in some fashion</p> <p>14 departmentally or --</p> <p>15 A. It's -- so actually I should back up. The</p> <p>16 University of Michigan Library has such a budget.</p> <p>17 Several other libraries have budgets. Departmental</p> <p>18 libraries have budgets. So there are probably dozens</p> <p>19 of entities within the University of Michigan who</p> <p>20 have -- make budgeted expenditures on library</p> <p>21 acquisitions, and by far the largest of those entities,</p> <p>22 but only one of them, is the one of which I am the</p> <p>23 dean.</p> <p>24 Q. With respect to the entity of which you are</p> <p>25 the dean, what is the acquisition budget for that</p>	<p style="text-align: right;">Page 109</p> <p>1 project.</p> <p>2 Q. Correct.</p> <p>3 A. Stop. And have we as a result of that, of</p> <p>4 having it not -- have we bought --</p> <p>5 Q. Let me ask the question again.</p> <p>6 A. Okay.</p> <p>7 Q. I want to direct your attention to those</p> <p>8 books where you have a digital copy as a result of the</p> <p>9 Google Library Project. Have there been circumstances</p> <p>10 where the University of Michigan has nonetheless gone</p> <p>11 out and bought additional paper copies of those books</p> <p>12 for the library?</p> <p>13 A. So I can say certainly, but I don't have</p> <p>14 specific knowledge of such cases. But knowing our</p> <p>15 practices, we would not take into account that we had a</p> <p>16 digital copy of an in copyright work, and we buy stuff</p> <p>17 all the time.</p> <p>18 Q. Okay. So having a digital copy of an in</p> <p>19 copyright work has not affected your purchasing</p> <p>20 decisions?</p> <p>21 A. That's correct.</p> <p>22 MR. BONI: Object to form.</p> <p>23 BY MS. DURIE:</p> <p>24 Q. Have there been circumstances, again</p> <p>25 referring your attention to this category of books that</p>

<p style="text-align: right;">Page 110</p> <p>1 are in copyright where you have a digital copy --</p> <p>2 A. That are not known not to be in copyright?</p> <p>3 Q. That are not known -- fair enough. That's</p> <p>4 a very good correction. Let me start again. Have</p> <p>5 there been circumstances where with respect to books</p> <p>6 that are not known not to be in copyright and for</p> <p>7 which you have a digital copy that the University of</p> <p>8 Michigan has paid publishers for digital full view</p> <p>9 access to those books?</p> <p>10 A. Again, certainly, although I can't cite</p> <p>11 specific instances.</p> <p>12 Q. Okay. Would having the digital copy have</p> <p>13 impacted that purchasing decision?</p> <p>14 A. No. Actually, I can site specific I mean.</p> <p>15 So in the scientific journal and e-book, scientific</p> <p>16 e-books area where we digitized, we also continue to</p> <p>17 license those same works frequently.</p> <p>18 Q. Okay. Has the University of Michigan ever</p> <p>19 paid money simply for the right to include a work in a</p> <p>20 searchable index as opposed to the ability to view or</p> <p>21 display the full text of that work?</p> <p>22 MR. BONI: Object to form.</p> <p>23 THE WITNESS: So I'm just -- I need</p> <p>24 a little help with the activity that you contemplate</p> <p>25 here.</p>	<p style="text-align: right;">Page 112</p> <p>1 connection with search functionality?</p> <p>2 BY MS. DURIE:</p> <p>3 Q. Any. Just in general. Presumably yes,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And has the University of Michigan</p> <p>7 ever paid a rights holder for permission to include a</p> <p>8 work simply in that index?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Okay. Now let me take indices that</p> <p>11 encompass the full text of the work. Has the</p> <p>12 University of Michigan ever paid a rights holder for</p> <p>13 permission to have that rights holder's work included</p> <p>14 in the index where it was an index of the full text of</p> <p>15 works?</p> <p>16 A. Again --</p> <p>17 MR. BONI: Object to form.</p> <p>18 THE WITNESS: I had no knowledge of</p> <p>19 such circumstances.</p> <p>20 BY MS. DURIE:</p> <p>21 Q. Okay.</p> <p>22 A. So no, as far as I know.</p> <p>23 Q. Now, you also mentioned earlier in your</p> <p>24 testimony the importance of being able to maintain</p> <p>25 duplicate copies of works as part of a digital archive;</p>
<p style="text-align: right;">Page 111</p> <p>1 BY MS. DURIE:</p> <p>2 Q. So in a situation in which the University of</p> <p>3 Michigan is creating an index of books in its</p> <p>4 collection, has the University of Michigan ever paid a</p> <p>5 rights holders simply for permission to include their</p> <p>6 book as an entry in the search results as opposed to</p> <p>7 paying the rights holder for permission to be able to</p> <p>8 read the book?</p> <p>9 MR. PETERSEN: I'm going to object</p> <p>10 to form, but the witness can certainly answer to the</p> <p>11 extent he understands the question.</p> <p>12 MR. BONI: Right.</p> <p>13 THE WITNESS: So if you're asking if</p> <p>14 we paid for the right to use a full text, no, no. I</p> <p>15 think the answer to your question is no.</p> <p>16 BY MS. DURIE:</p> <p>17 Q. Okay. Let me make sure we're clear. So</p> <p>18 have there been situations where the -- the University</p> <p>19 of Michigan has created indices of works in its</p> <p>20 collection; is that right?</p> <p>21 A. So indices of the contents of works so -- is</p> <p>22 what you're talking about?</p> <p>23 Q. Well, let me just start with indices of</p> <p>24 works in its collection.</p> <p>25 MR. PETERSEN: Do you mean in</p>	<p style="text-align: right;">Page 113</p> <p>1 is that correct?</p> <p>2 A. I'm not quite sure what you're referring to.</p> <p>3 Q. You mentioned the importance of being able</p> <p>4 to keep works for posterity --</p> <p>5 A. Yes.</p> <p>6 Q. -- is that right?</p> <p>7 A. Um-hum.</p> <p>8 Q. How is it that the library project has</p> <p>9 enabled Michigan to do that?</p> <p>10 A. The library project has led to our</p> <p>11 possession of digital files of many millions of our</p> <p>12 works, and so those files are available. They exist</p> <p>13 and are available as a record of the contents of those</p> <p>14 works should the works deteriorate, disappear, have</p> <p>15 other things happen to them.</p> <p>16 Q. Okay. Has the University of Michigan ever</p> <p>17 paid rights holders money for the inclusion of works</p> <p>18 purely in an archive, a duplicate copy of a work for</p> <p>19 purely archival purposes?</p> <p>20 A. Specifically actually here, if I may, a dark</p> <p>21 archive?</p> <p>22 Q. Correct, where the works are not being</p> <p>23 accessed for any purpose, but --</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Okay.</p>

29 (Pages 110 - 113)

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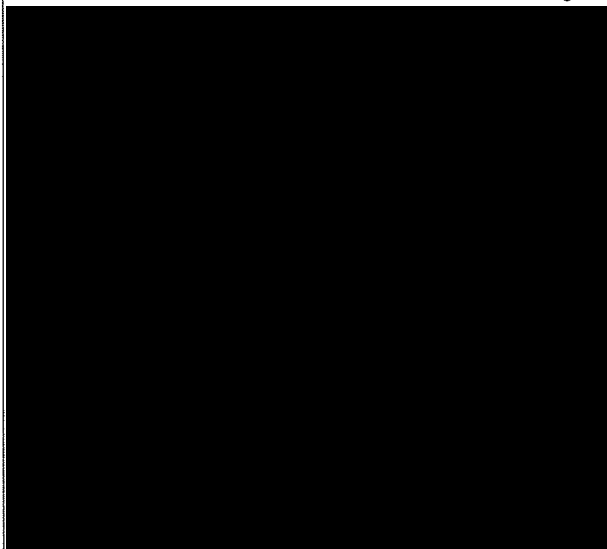
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<p style="text-align: right;">Page 114</p> <p>1 A. No, no, we haven't, okay.</p> <p>2 Q. You also mentioned earlier in your testimony</p> <p>3 the Orphan Works Project. What was the rationale for</p> <p>4 undertaking the Orphan Works Project?</p> <p>5 MR. BONI: Object to form. Whose</p> <p>6 rationale, Daralyn?</p> <p>7 BY MS. DURIE:</p> <p>8 Q. Were you involved in early discussions</p> <p>9 regarding the desirability of embarking on the Orphan</p> <p>10 Works Project?</p> <p>11 A. Yes.</p> <p>12 Q. What was your understanding of the</p> <p>13 University of Michigan's rationale for embarking on</p> <p>14 that project?</p> <p>15 A. The project arose out of the decision by</p> <p>16 Judge Chin to -- not to approve the amended settlement</p> <p>17 agreement. And under that agreement, the -- many</p> <p>18 orphan works would have been made readable, usable as</p> <p>19 part of the product that Google and the Authors Guild</p> <p>20 and the publishers agreed to.</p> <p>21 And so we asked ourselves following</p> <p>22 that, is there some way that we could get orphan works,</p> <p>23 which would of course by definition, if they were well</p> <p>24 established, their orphanage was -- orphan-ness was</p> <p>25 well established, not to have any consequence for a</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. BONI: All right. Let's try.</p> <p>2 REEXAMINATION BY MR. BONI:</p> <p>3 Q. Dr. Courant, you testified just now that</p> <p>4 University of Michigan has not paid any rights holder</p> <p>5 for books that were stored in a dark archive. My</p> <p>6 question is whether any rights holders have been paid</p> <p>7 for books in any other kind of archive at the</p> <p>8 University of Michigan?</p> <p>9 MR. PETERSEN: Objection to form,</p> <p>10 vague.</p> <p>11 THE WITNESS: We have about</p> <p>12 8 million books in the library, and we paid for pretty</p> <p>13 much every one of them.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Got it. So my question is, you drew a</p> <p>16 distinction in your response between dark archive and</p> <p>17 other -- any other type of archive as the question was</p> <p>18 presented, and my question is, did the University of</p> <p>19 Michigan ever pay a rights holder for a book purely for</p> <p>20 storage for archival purposes?</p> <p>21 A. So in a light archive it just isn't purely</p> <p>22 for storage. It's automatically by definition of light</p> <p>23 readable, and we certainly have paid rights holders on</p> <p>24 millions of occasions for reading access to works,</p> <p>25 including reading access to digital works.</p>
<p style="text-align: right;">Page 115</p> <p>1 rights holder, was there any way we could make digital</p> <p>2 uses of those works, which was something that there was</p> <p>3 a great interest in on the campus, because actually</p> <p>4 digital works are much easier to get at and use than</p> <p>5 print works for many purposes. So that was the genesis</p> <p>6 of the idea.</p> <p>7 Q. You said that digital copies are easier to</p> <p>8 use in some cases than print copies. Why is that?</p> <p>9 A. Well, there's a lot of things you can do with</p> <p>10 them that you can't do with print copies. One of them</p> <p>11 is read them at distance. One of them, again, if you</p> <p>12 can combine searching and reading, which you can for</p> <p>13 works in the public domain, you can look at the way in</p> <p>14 which phrases were used on a given subject over</p> <p>15 different periods of time and do a kind of scholarship</p> <p>16 and study that really is much more difficult to do</p> <p>17 using only print volumes.</p> <p>18 MS. DURIE: Okay. Thanks very much.</p> <p>19 I don't have any further questions.</p> <p>20 MR. BONI: I just have a few</p> <p>21 follow-up questions. I will not be long. We can break</p> <p>22 or not. I'm ready to go now if you want.</p> <p>23 MS. DURIE: There's three minutes on</p> <p>24 the tape, Mike, so as long as you can get done then, I</p> <p>25 think we can keep going.</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. Is there any other type of archive other</p> <p>2 than one that has books available for reading in a dark</p> <p>3 archive?</p> <p>4 MR. PETERSEN: Objection to form.</p> <p>5 THE WITNESS: There -- one could</p> <p>6 hold an archive of -- usually -- usually there are not</p> <p>7 other archives of published works, of printed works,</p> <p>8 although one could imagine very rare books being held</p> <p>9 in a way that would be principally archival,</p> <p>10 principally to take care of them and only rarely,</p> <p>11 rarely for use.</p> <p>12 BY MR. BONI:</p> <p>13 Q. Were you -- Dr. Courant, were you personally</p> <p>14 in favor of the amended settlement in the Google Books</p> <p>15 case?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether --</p> <p>18 A. Generally.</p> <p>19 Q. Generally. Do you know whether that view</p> <p>20 was held by your colleagues at the University of</p> <p>21 Michigan?</p> <p>22 MR. PETERSEN: Objection, calls for</p> <p>23 speculation.</p> <p>24 THE WITNESS: It was surely held by</p> <p>25 some of them and surely not held by others.</p>

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17 MR. PETERSEN: The videotape is up,
 18 Mike.
 19 MR. BONI: All right. That's all I
 20 have.
 21 MS. DURIE: Perfect.
 22 THE VIDEOGRAPHER: This concludes
 23 the deposition, the time is 4:46 p.m.
 24 (The deposition was concluded
 25 at 4:46 p.m.)

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1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF OAKLAND)
 5 I, Jennifer L. Ward, Certified Shorthand Reporter,
 6 a Notary Public in and for the above county and state,
 7 do hereby certify that the above deposition was taken
 8 before me at the time and place hereinbefore set forth;
 9 that the witness was by me first duly sworn to testify
 10 to the truth, and nothing but the truth, that the
 11 foregoing questions asked and answers made by the
 12 witness were duly recorded by me stenographically and
 13 reduced to computer transcription; that this is a true,
 14 full and correct transcript of my stenographic notes so
 15 taken; and that I am not related to, nor of counsel to
 16 either party nor interested in the event of this cause.
 17
 18
 19 _____
 20 Jennifer L. Ward, CSR-3717
 21 Notary Public,
 22 Oakland County, Michigan
 23
 24 My Commission expires: 10-27-2013
 25

Page 119

1 CERTIFICATE OF DEPONENT
 2 I, PAUL N. COURANT, Ph.D., do hereby certify
 3 that I have read the foregoing transcript of my
 4 testimony, and further certify that it is a true
 5 and accurate record of my testimony (with the
 6 exception of the corrections listed below):

7	Page	Line	Correction
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20
 21 _____
 22 PAUL N. COURANT, Ph.D.

23 SUBSCRIBED AND SWORN TO BEFORE ME
 24 THIS ____ DAY OF _____, 20__.

25 _____ MY COMMISSION EXPIRES:
 (NOTARY PUBLIC)

31 (Pages 118 - 120)

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7	Page	Line	Correction
8	8	22-23	university librarian University Librarian
9	11	2	the librarian the University Librarian
10	12	16	university librarian University Librarian
11	21	7	add at
12	29	14	limited time basis limited basis
13	36	10	digit digital
14	47	11	engram Ngram
15	53	21	Michigan libraries Michigan Library's
16	61	9	joint Answer and Joint Answer and
17	62	5	before I read it. before. I read it.
18	71	25	orphan works orphan work
19	73	3	etcetera et cetera

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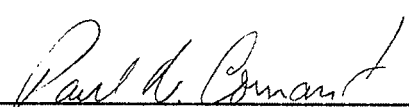
(continued from previous page)

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(part 2)

1 CERTIFICATE OF DEPONENT

2 I, PAUL N. COURANT, Ph.D., do hereby certify
 3 that I have read the foregoing transcript of my
 4 testimony, and further certify that it is a true
 5 and accurate record of my testimony (with the
 6 exception of the corrections listed below):

7	Page	Line	Correction
8	96	20	apparent until the apparent under the
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11	117	2	for reading in a dark for reading and a dark
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20 
 21 PAUL N. COURANT, Ph.D.

22 SUBSCRIBED AND SWORN TO BEFORE ME

23 THIS 22nd DAY OF June, 2012.24 

25 (NOTARY PUBLIC)

MY COMMISSION EXPIRES: 12/1/15

DENISE M. TRUESDELL
 NOTARY PUBLIC - STATE OF MICHIGAN
 COUNTY OF WASHTENAW
 My Commission Expires December 1, 2015
 Acting in the County of Washtenaw

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